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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SUBRAMANIAN EASWARA
RAMANAN et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA BOARD OF
ACCOUNTANCY,

Defendant and Respondent.

H041566

(Santa Clara County

Super.Ct.No. 1-12-CV227422)

This dispute concerns license revocation action taken by the California Board of Accountancy, Department of Consumer Affairs (Board). In November 2009, the Board filed an accusation requesting a hearing and a subsequent decision revoking or suspending the professional accountancy licenses of Subramaniam Easwara Ramanan (Ramanan) and his accounting firm, Neeka Accountancy Corporation (Neeka). (Ramanan and Neeka are hereafter collectively referred to as Accountants.) After a 23-day hearing that spanned a period of over nine months, an administrative law judge (ALJ) issued a decision recommending the Accountants' licenses be revoked; the Board adopted the ALJ's decision, and it became final in June 2012. Accountants thereafter filed a petition for administrative writ of mandamus challenging the Board's decision. A statement of decision and judgment were filed by the court below in October 2014 denying Accountant's writ petition.

On appeal, Accountants assert four essential claims of error. First, they argue that the Board, during the administrative hearing, twice amended the accusation to assert new

charges against Accountants, and the amended accusations were procedurally defective because they were undated and unsigned. Accountants argue that this was prejudicial and prevented them from having an adequate opportunity to mount their defense. Second, Accountants contend that the ALJ's administrative decision did not comply with statutory requirements for decisions after administrative proceedings as explained by the California Supreme Court in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*). Specifically, they argue the decision was deficient, inter alia, because (a) its conclusions did not refer to supporting factual findings, and "[t]here is no evidence of any analytic route in [the] decision"; (b) factual findings contained in the ALJ's decision were insufficient and were not supported by citation to supporting evidence; and (c) the ALJ's decision was defective in that it failed to address several major issues raised at the administrative hearing, including the failure to refer to the testimony of several witnesses, and the failure to reach determinations as to the credibility of such witnesses. Third, Accountants argue that the trial court erred by improperly inserting its own factual findings as a means of attempting to cure the inadequate findings of the administrative decision being reviewed. And fourth, Accountants contend that the trial court improperly delegated its judicial duties by ordering the Board to prepare a proposed statement of decision that included specific references to exhibits supporting any factual findings, when the court had not adequately supported its tentative decision in the first instance.

We conclude that there was no error. First, we hold that Accountants forfeited any procedural challenge to the Board's amendments to the accusation during the hearing; Accountants failed to preserve any such challenge. Moreover, we conclude the forfeited challenge, in any event, lacks merit. Second, we conclude that the Board decision complied with *Topanga, supra*, 11 Cal.3d 506, in that the decision contained numerous findings from which a reviewing court could determine "the analytic route the

administrative agency traveled from evidence to action.” (*Id.* at p. 515.) Third, we find that Accountants’ claim that the trial court improperly inserted its own factual findings to cure the inadequate findings of the administrative decision was forfeited, and, in any event, lacks merit. Fourth, we conclude that Accountants’ contention that the trial court improperly delegated its judicial duties by ordering the Board to prepare a proposed statement of decision that included specific references to exhibits and evidence was also forfeited; we conclude that the claim is, in any event, without merit. Accordingly, we will affirm the judgment.

I. PROCEDURAL BACKGROUND¹

A. Administrative Proceedings

On or about November 12, 2009, the Board filed an accusation alleging six causes for discipline against Accountants, citing in support thereof, *inter alia*, Business and Professions Code sections 5060, 5097, subdivisions (a), (b), and (c), and 5100, subdivisions (c), and (g).² Prior to hearing, on June 29, 2010, the Board filed a first

¹ It is customary and is a required matter of appellate practice that the appellant’s opening brief include “a summary of the significant facts limited to matters in the record.” (Cal. Rules of Court, rule 8.204(a)(2)(C).) Here, although Accountants include a section captioned “Facts and Procedural History” (capitalization and emphasis omitted), we observe that only a few underlying facts concerning this dispute are presented in the opening brief. Notably, in that section of Accountants’ brief, there are only 12 references to the testimony from the administrative proceedings, notwithstanding that the transcript of that testimony consisted of more than 4,000 pages. Their opening brief is therefore noncompliant, as their recitation of facts is primarily a summary of the procedural history of the case, sprinkled with a few facts; Accountants’ brief does not provide this court with a summary of the significant underlying facts of the dispute as presented at the administrative hearing. (See *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868-869 [criticizing as “seriously defective” appellants’ briefs that failed to include statement of facts].)

² All further statutory references are to the Business and Professions Code unless otherwise stated.

amended accusation, adding a seventh cause of discipline. The Board, again prior to hearing, filed a second amended accusation on December 15, 2010, adding an eighth cause of discipline.

The matter proceeded to administrative hearing commencing on February 7, 2011, before Steven C. Owyang, Administrative Law Judge (the ALJ). The hearing took place in 2011 over 23 days (February 7, 9, 10, 14, and 15, August 22-25, 29-31, September 1, 6-8, and November 7, 8, 14-18). On the first day of the hearing (February 7, 2011), the Board submitted a third amended accusation. And on September 7, 2011 (the 15th day of the hearing), the Board submitted a fourth amended accusation (hereafter sometimes referred to as the Accusation). Neither the third amended accusation nor the fourth amended accusation alleged additional causes for discipline.

On April 4, 2012, the ALJ issued his 16-page proposed decision, ordering Accountants' licenses revoked. In it, the ALJ found that the Board had established by clear and convincing evidence that each of the eight causes for discipline alleged in the Accusation should be sustained. The ALJ concluded further that, had Accountants' violations not included "a lack of honesty with the [B]oard," the imposition of probationary terms might have been the appropriate disciplinary action. But in light of this dishonesty charge, the ALJ concluded that revocation of Accountants' licenses was the appropriate discipline. The Board adopted in its entirety the ALJ's proposed decision on May 29, 2012, indicating that it would become effective June 28, 2012. (Because the Board adopted the proposed decision of the ALJ in its entirety, we will hereafter refer to it as the the ALJ's Decision or the Decision.)

B. Court Proceedings

On June 28, 2012, Accountants filed a petition in the court below under Code of Civil Procedure section 1094.5 for writ of administrative mandamus or other appropriate relief (writ petition) against the Board. They alleged, inter alia, that they were both

licensees of the Board, which was the entity with exclusive power to issue, suspend, and revoke licenses to practice accountancy in California. Accountants alleged that after the Board initiated an administrative proceeding seeking to suspend or revoke Accountants' licenses, and after a hearing, a proposed decision and order issued revoking Accountants' licenses; that proposed decision and order was adopted by the Department, effective June 28, 2012. Accountants alleged that the Decision was invalid because (a) the agency proceeded without or in excess of authority; (b) Accountants were deprived of a fair hearing; (c) the Decision was not supported by the findings; (d) the findings were not supported by the evidence; (e) the agency did not proceed in the manner required by law; and (f) the agency abused its discretion.

In its petition, Accountants requested that the court issue a stay of the Board's revocation decision pending a determination of the merits of the petition. The court granted the stay request by order filed June 29, 2012.

The District and the County Board filed answers to the writ petition, and the District filed a memorandum in opposition to the relief sought in the writ petition.

The superior court conducted a four-day hearing on the petition, permitting extensive argument by counsel. On September 12, 2013, the court filed a tentative decision in favor of the Board, concluding that Accountants had failed to meet their burden of showing that the administrative decision was contrary to the weight of the evidence. The court requested that the Board prepare a proposed statement of decision consistent with the court's ruling. Thereafter, Accountants filed a request for statement of decision and an amended request, the Board submitted a proposed statement of decision, and Accountants filed objections to the Board's proposal and requested a hearing.

While the proceedings on the court's statement of decision were pending, Accountants filed a motion for relief in which they requested, inter alia, that the tentative

decision be vacated and that they be permitted to present the live testimony of former Neeka employee Ramalingam Nalin (Nalin), whose role herein is discussed in detail, *post*. Shortly thereafter, in response to Accountants' having noticed the deposition of another former Neeka employee, Ami Shah (Shah), the Board filed a motion for protective order to prevent such deposition from occurring. After the court conducted further proceedings and heard argument on motions by the parties, on November 22, 2013, the court (1) denied leave for Accountants to take the deposition of Ami Shah, (2) vacated its prior tentative decision, (3) granted Accountants leave to submit testimony from Nalin, and (4) agreed to issue a new tentative decision after submission of Nalin's testimony.

Nalin testified in court on February 28, 2014. After receiving supplemental briefing from counsel concerning the impact of Nalin's testimony, the court permitted further argument. At the conclusion of the hearing, the court requested that each party submit proposed statements of decision from each party's perspective. Thereafter, the superior court on August 28, 2014, filed a proposed statement of decision and judgment in the Board's favor. Accountants filed objections to the court's proposed statement of decision. The Board filed a response to these objections. On October 17, 2014, the court file a statement of decision and judgment.

Accountants filed a timely notice of appeal.³

³ Accountants filed a petition for writ of supersedeas in November 2014 seeking an order staying the Board's revocation decision pending the appeal. This court granted a temporary stay on November 13, 2014. And this court later granted the petition for writ of supersedeas, ordering that the superior court's stay order would remain in effect until the appeal was finally determined.

II. DISCUSSION

A. Administrative Mandamus & Standards of Review

Review of an administrative decision by mandamus is appropriate where the hearing in the underlying administrative proceeding was mandatory, evidence was required to be taken in the proceeding, and there was discretion vested in the body determining the matter in deciding contested factual issues. (Code Civ. Proc., § 1094.5, subd. (a).) A court reviewing an agency's decision under Code of Civil Procedure section 1094.5 is guided by the following: "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).)

A challenge to a decision that the findings are not supported by the evidence in the administrative record is reviewed by the trial court under either the substantial evidence standard or the independent judgment standard. (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 32 (*Strumsky*); see Code Civ. Proc., § 1094.5, subd. (c).)⁴ The independent judgment standard applies to cases in which "an administrative decision affects a right which has been legitimately acquired or is otherwise 'vested,' and when that right is of a fundamental nature from the standpoint of

⁴ "Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

its economic aspect or its ‘effect . . . in human terms and the importance . . . to the individual in the life situation.’ ” (*Strumsky, supra*, at p. 34, quoting *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144 (*Bixby*).) In that instance, the trial court reviews the administrative decision for legal errors and conducts a limited trial de novo of the evidence presented in the administrative proceeding and any evidence wrongfully excluded by the agency. (*Bixby, supra*, at pp. 143-144 & fn. 10.) Even where the superior court applies the independent judgment standard, it must accord a “ ‘strong presumption of . . . correctness [to administrative findings], and the burden rests on the complaining party to convince the court that the [administrative] decision is contrary to the weight of the evidence.’ [Citation.]” (*Id.* at p. 139.) Here, since the administrative decision concerned a vested right to a previously issued professional or vocational license, it was subject to review by the superior court under the independent judgment standard. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789 (*Hughes*); see also *Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 300 (*Clare*) [independent judgment standard applied to trial court’s review of decision revoking accountant’s license].)

The trial court below correctly applied the above-stated principles by “examin[ing] the administrative record for errors of law and exercis[ing] its independent judgment upon the evidence. [Citations.]” Although ordinarily our role here would be to review the trial court’s decision for substantial evidence (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1058), Accountants do not make the argument on appeal that the trial court decision should be reversed due to an absence of substantial evidence. (Cf. *McBride v. California Bd. of Accountancy* (2005) 130 Cal.App.4th 518, 528-530 (*McBride*) [evidentiary challenges to trial court’s upholding Board’s findings in imposing discipline on accountants].) The absence of such argument is highlighted by Accountants’ failure to present a fair and accurate summary

of the relevant facts from the administrative proceeding. (See *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218 [appellant's failure to present and analyze evidence, both favorable and unfavorable, waives sufficiency-of-the-evidence challenge on appeal].) Accordingly, because Accountants do not challenge the trial court's decision on the basis of its review of the evidentiary record in the administrative proceeding, we are not governed by the substantial evidence standard of review on appeal.

Questions of law decided by the trial court are reviewed de novo by the appellate court. (*Prentice v. Board of Administration* (2007) 157 Cal.App.4th 983, 989.) Likewise, as a general rule, the question of whether the agency has proceeded lawfully is a matter reviewed de novo by both the superior court and the appellate court. (*Stewart Enterprises, Inc. v. City of Oakland* (2016) 248 Cal.App.4th 410, 420; see also *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482 [appellate court reviews de novo claim that administrative hearing was procedurally unfair, because issue is one of law].) Thus, “ ‘the ultimate questions, whether the agency's decision was . . . unlawful or procedurally unfair, are essentially questions of law. With respect to these questions the trial and appellate courts perform essentially the same function, and the conclusions of the trial court are not conclusive on appeal.’ [Citation.]” (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.) This principle is applicable here, where Accountants' principal claims are that the Decision was unlawful (i.e., it failed to include the required factual findings or the analytic route by which the Board reached its decision), and it was procedurally unfair (i.e., it was based upon amended accusations presented after the hearing had commenced for which Accountants had an inadequate opportunity to prepare a response). We therefore conduct de novo review here.

B. Nature of Dispute

Before addressing the four essential claims of error asserted by Accountants, we present some necessary background. We will summarize (1) the statutory framework under which the Board pursued disciplinary proceedings against Accountants, and (2) the investigation that resulted in the filing of the original accusation by the Board.

1. Statutory Framework

The California Board of Accountancy (Board) in the Department of Consumer Affairs consists of 15 members—seven licensees and eight members of the public who are not licensed accountants. (§ 5000.) The Board is responsible for, inter alia, licensing (§§ 5023, 5033, 5080), issuance of permits to engage in public accountancy practice to licensees (§ 5070, subs. (a)), continuing education (§§ 5027, 5028), promulgating governing professional rules, regulations, and standards for the practice (§§ 5018, 5060, subd. (d), 5061, subd. (e)), and disciplinary action (§ 5100). The Legislature has pronounced that “[p]rotection of the public shall be the highest priority” in the Board’s performance of its licensing, regulatory, and disciplinary duties. (§ 5000.1.)

The board, “[a]fter notice and hearing . . . , may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct.” (§ 5100.) Among the grounds upon which the Board may invoke its disciplinary powers are a licensee’s “[d]ishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy.” (§ 5100, subd. (c); see, e.g., *McBride, supra*, 130 Cal.App.4th at pp. 529-530 [accountants disciplined on basis they were grossly negligent].) Disciplinary action may also be imposed under section 5100,

subdivision (g), if the licensee violates section 5097,⁵ which concerns the documentation required to be created and maintained by accountants for independent audits. And another ground serving as a basis for disciplinary action is the “[w]illful violation of this chapter [(§ 5000 et seq.)] or any rule or regulation promulgated by the [B]oard under the authority granted under this chapter.” (§ 5100, subd. (g).) As we discuss, *post*, the Board charged Accountants in the fourth amended accusation with unprofessional conduct under section 5100 subdivision (c) and (g).

2. Board Investigation of Ramanan and Neeka

The investigation by the Board that ultimately led to the initiation of disciplinary proceedings involving Accountants centered around audit work performed for their client, Systat Software, Inc. (Systat), a statistical software distributor. Specifically, Accountants audited Systat’s financial statements and issued independent accountant’s reports thereon for the fiscal years ending March 31, 2003 (the 2003 audit report), and

⁵ “(a) Audit documentation shall be a licensee’s records of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in an audit engagement. Audit documentation shall include, but is not limited to, programs, analyses, memoranda, letters of confirmation and representation, copies or abstracts of company documents, and schedules or commentaries prepared or obtained by the licensee. [¶] (b) Audit documentation shall contain sufficient documentation to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to understand the nature, timing, extent, and results of the auditing or other procedures performed, evidence obtained, and conclusions reached, and to determine the identity of the persons who performed and reviewed the work. [¶] (c) Failure of the audit documentation to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a presumption that the procedures were not applied, tests were not performed, information was not obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable presumption affecting the burden of proof relative to those portions of the audit that are not documented as required in subdivision (b). The burden may be met by a preponderance of the evidence. [¶] (d) [¶] (e) [¶] (f)” (§ 5097.)

March 31, 2004 (the 2004 audit report). The investigation focused on whether the Accountants' audit reports satisfied the requirement of auditor independence due to the role of an employee of Accountants, Nalin, in performing work on-site at the client Systat. As noted by the ALJ in his tentative decision, "[a] primary issue in this case was the role of [Accountants'] employee[,], Nalin Ramalingam[,], while he was assigned to [Accountants'] client[,], Systat[,], and whether [Nalin's] work at Systat impaired [Accountants'] independence in the 2003 and 2004 audits."⁶ A second issue, as identified by the ALJ, was "whether certain processes and analyses were conducted [by Accountants on the 2003 and 2004 audits], when they were conducted, who did them, and when."

A former employee of Accountants, Shah, filed a complaint with the Board, which resulted in it opening an investigation in March 2008, conducted by Diane Coffman. In July 2008, Coffman made a written request that Accountants provide, among other documents, their audit work papers for the 2003, 2004, and 2005 audits of Systat's financial statements.⁷ Accountants furnished the work papers to Coffman in September 2008. The ALJ found in his proposed decision that "[Accountants] gave no indication that these work papers were incomplete or inaccurate." Coffman advised Accountants in December 2008 that there were a number of "deficiencies" with respect to the work papers. Shortly thereafter, Ramanan advised Coffman for the first time that electronic work papers had been prepared but that a server in Accountants' office in Fremont had

⁶ Although Ramalingam Nalin is referred to by the ALJ in his tentative decision as "Nalin Ramalingam," it is apparent from other documents in the record, including those relating to a wage dispute between Nalin and Neeka resulting in a claim with the Labor Commissioner and a subsequent lawsuit, that "Nalin" is the individual's surname.

⁷ The report of the audit of Systat's 2005 financial statements was not mentioned in the accusations and was not at issue in this case.

crashed, resulting in the loss of this documentation. Shortly thereafter, Ramanan wrote to Coffman and advised that a third party (Alan David, who had sold his practice to Ramanan) and his associates had downloaded from Neeka's server its sensitive files and had removed them.

Ramanan testified under oath at an investigative hearing held on May 7, 2009—prior to the filing of the accusation by the Board. As noted by the ALJ in his Decision, Ramanan testified, inter alia, that “[1] there had been a ‘pilferage’ of confidential materials from his firm . . . [; 2] hard copies of the audit work papers were stolen . . . [; 3] electronic work papers were deleted, and that backup DVDs were overwritten.”

After its investigation, on November 12, 2009, the Board commenced the disciplinary proceeding by filing an accusation, alleging six causes of discipline. Accountants file a notice of defense and request for hearing on November 24, 2009.

In September 2010—approximately 26 months after Coffman's initial request that Accountants provide the Board with the work papers from the 2003, 2004, and 2005 audits—Accountants, through their attorneys, provided the Board with approximately 2,300 pages of documents that they claimed were work papers from “ ‘e-binders’ ” which had been recovered by Neeka employee Luke Kochiuba (Kochiuba) from deleted but not overwritten files on older computer equipment.

C. Claim Based on Inadequate Opportunity to Present Defense

1. Background

Accountants contend that they were deprived of the opportunity to adequately prepare and present a defense at the administrative hearing. They argue that the Board's submission after the commencement of the hearing of amended accusations that contained new charges “infringed on [their] ability to adequately mount a defense to the new charges.” In addition, Accountants challenge the form of the third amended and fourth amended accusations because they were unsigned and undated, asserting that the

accusations “offer no reassurance that [they] were issued or sanctioned by the public entity as required.” In support of this argument, Accountants cite Government Code section 11503, under which “[t]he accusation . . . shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held.”

As noted above, on February 7, 2011—the first day of the hearing and prior to testimony by any witnesses—the Board submitted a third amended accusation. The third amended accusation did not add any causes for discipline. It contained only a few minor revisions to the second amended accusation, correcting two typographical errors, adding a citation to subdivision (e) of section 5100, and adding a citation to section 5100, subdivisions (c) and (g) in support of the sixth cause for discipline.

Accountants’ counsel at the time objected to the third amended accusation—as well as to the second amended accusation served in December 2010 that had added dishonesty as a cause for discipline—acknowledging that Government Code section 11507 permitted the amendment of the accusation, subject to the “ ‘[t]he respondent . . . hav[ing] a reasonable opportunity to prepare his defense.’ ” After discussion, counsel for the parties and the ALJ agreed to a two-day continuance of the hearing to afford Accountants the opportunity to review the new allegations. Accountants did not object to the form of the pleading based upon its being undated and unsigned.

On the 15th day of the hearing (September 7, 2011), the Board submitted a fourth amended accusation, which contained no new causes for discipline and only several relatively minor revisions to the third amended accusation. Accountants did not object to the fact that the pleading was unsigned and undated. Nor did they object to the submission of the fourth amended accusation or request a continuance to address its allegations. The hearing continued to proceed over eight more days, before its conclusion on November 18, 2011.

2. *Forfeiture*

Under the doctrine of forfeiture (oftentimes termed waiver) a party to an appeal, as a general rule, may not assert an argument or objection it failed to raise at the trial level. As explained 40 years ago by our high court: “ ‘An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver Often, however, the explanation is simply that it is *unfair to the trial judge and to the adverse party* to take advantage of an error on appeal when it could easily have been corrected at the trial.’ [Citation.]” (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1, original italics (*Doers*).)

The principle explained in *Doers* is applicable to unasserted claims, objections, and defenses at an administrative hearing. A party who fails to assert a claim, objection, or defense at the hearing may be barred from raising it at the superior court or appellate court levels. Thus, for instance, a party who failed to object to an expert’s testimony during an administrative hearing was found to have waived any objections to such testimony, including relevance objections, belatedly asserted on appeal. (See *Jaramillo v. State Bd. for Geologists & Geophysicists* (2006) 136 Cal.App.4th 880, 893.) Likewise, where the agency failed to assert at the administrative level that the claimant had not properly filed an administrative appeal, and it proceeded to address the claimant’s appeal on the merits, the agency’s argument was deemed forfeited and could not be presented on appeal. (See *Hawthorne Savings & Loan Assn. v. City of Signal Hill* (1993) 19 Cal.App.4th 148, 156 & fn. 3.) The forfeiture doctrine applies to procedural challenges as well: “The case law consistently shows that due process and bias issues must be presented to the hearing officer or tribunal itself for the issue to be preserved. [Citations.]

. . . [T]he trial court did not err in concluding [petitioner] had waived his due process and bias claims.” (*Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th 866, 892, fn. 6.) And a party to an administrative proceeding may not safely reserve a substantive argument supporting a challenge to the approval of a development project. (See *Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163, 181 [failure to argue at administrative level that reasonable economic return from property could be achieved even without the project for which approval was sought barred party from raising it “for the first time in a judicial challenge to the administrative decision”].)

In *Anserv Insurance Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197 (*Anserv*), appellants—parties to an administrative proceeding in which their professional insurance licenses were revoked—argued they had “not receive[d] a fair trial in the administrative process.” (*Id.* at p. 207.) They argued, inter alia, that they were prejudiced by the fact that the agency had served a second amended accusation less than two working days before the hearing. (*Id.* at p. 208.) The appellate court rejected this argument based upon the fact that appellants’ counsel had waived it “by acknowledging . . . service [of the amended accusation] and proceeding to present a defense.” (*Ibid.*; see also *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 787-788 (*Niles Freeman*) [due process objections not raised at administrative hearing deemed forfeited].)

Similar to the circumstances in *Anserv*, here, Accountants, through their attorney, acknowledged the third and fourth amended accusations, did not object to the absence of a date or signature on either pleading, did not object to the fourth amended accusation, and proceeded to defend against the amended accusations. The rationale for applying principles of forfeiture—that it is unfair to the parties and the court (or in this instance, the ALJ) to reserve objections, arguments, claims, or defenses that could have been addressed at the trial (or administrative hearing (see *Doers, supra*, 23 Cal.3d at pp. 184-185, fn. 1)—has direct application here. For instance, had Accountants asserted

an objection at the hearing to the absence of dates or signatures on the amended accusations, it would have been presumably a very easy matter for the Board to remedy the problem. Although counsel objected to the third amended accusation at the time it was presented on the first day of the hearing, he was granted a two-day continuance to address it, and it is apparent that he lodged no further objections to it after having been granted the continuance. And had Accountants objected to the fourth amended accusation at the time it was presented by the Board, the ALJ, if appropriate, could have fashioned relief—such as granting Accountants a continuance to review any new allegations in the pleading—to address Accountants’ concerns. Accountants’ failure to object to the third amended and fourth amended accusations at the administrative level resulted in a forfeiture of their present challenges. (*Niles Freeman, supra*, 161 Cal.App.4th at pp. 787-788; *Anserv, supra*, 83 Cal.App.4th at p. 208.)

3. *Merits of Procedural Challenges*

In the context of an administrative hearing, the applicant/licensee “must be afforded an opportunity to be heard and respond to the [agency’s] determinations and the [agency] must issue sufficient findings to afford review.” (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 565.) The “agency must provide a private party with adequate *notice* of the issues to be considered in administrative adjudication so that the party has sufficient time to prepare for the hearing and to meet the government’s arguments. Notice must be ‘reasonably calculated, under all the circumstances, to apprise’ the party of the pendency and nature of the proceedings and to afford the party reasonable opportunity to present objections. [Citations.]” (Cal. Practice Guide: Administrative Law (The Rutter Group 2018), ¶ 3:260, p. 3-41, original italics.)

Under the Administrative Procedures Act, a hearing to determine whether a license should be revoked is initiated through the filing by the agency of an accusation. (Gov. Code, § 11503, subd. (a).) That statute “establishes the constitutionally required

notice to the accused of the standards by which the accused's conduct is to be measured. [Citation.] (*Smith v. State Bd. of Pharmacy* (1995) 37 Cal.App.4th 229, 241.) "The accusation . . . shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his [or her] defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules." (Gov. Code, § 11503, subd. (a).) An administrative agency pursuant to Government Code section 11507,⁸ may file an amended accusation up until the time the matter is submitted, subject to the respondent's right to have a sufficient opportunity to address any new charges in the amended accusation. (*Anserv, supra*, 83 Cal.App.4th at p. 208.)

In this instance, the third amended accusation was presented at the outset of the administrative hearing on February 7, 2011, the first day of the hearing and prior to testimony by any witnesses. In response to Accountants' objections, counsel and the ALJ agreed to a two-day continuance of the hearing for Accountants to review the new allegations. There is no merit to their procedural challenge to the third amended accusation, and Accountants make no showing that they suffered prejudice as a result of the presentation of the amended pleading at the beginning of the hearing (as a result of which they received a two-day continuance).

⁸ "At any time before the matter is submitted for decision, the agency may file, or permit the filing of, an amended or supplemental accusation All parties shall be notified of the filing. If the amended or supplemental accusation . . . presents new charges, the agency shall afford the respondent a reasonable opportunity to prepare his or her defense to the new charges, but he or she shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation . . . may be made orally and shall be noted in the record." (Gov. Code, § 11507.)

The fourth amended accusation contains only three matters not alleged previously in the third amended accusation. First, there was the inclusion of one additional applicable professional standard, “AU § 530 (Audit Report Date),” cited in the general allegations of the accusation. Second, the Board, in the second cause for discipline (gross negligence), added a new paragraph 23(C), under the heading “Auditor’s Report,” alleging that “[Accountants’] April 28, 2004 audit report [of Systat’s financial statements] was based in part on an audit performed by another auditor. The other auditor audited Systat Software UK Limited. [Accountants] did not accurately reflect total revenue and earnings of Systat Software UK Limited in its April 28, 2004 audit report. (AU § 230.01)” Third, the Board, in the second cause for discipline (gross negligence), added a new paragraph 23(D), under the heading “Auditor’s Report,” alleging that “[Accountants] dated the May 16, 2003 and April 28, 2004 audit reports [of Systat’s financial statements] before the completion of field work. (AU § 530.01; AU § 230.01)”

The additional allegations of the fourth amended accusation appear, in the context of a review of the entire pleading and comparing it with the third amended accusation, to be relatively minor ones. When the amended pleading was submitted at the hearing on September 7, 2011, the Board’s attorney explained that (1) the reference to AU section 530.01 was founded upon recent testimony by the Board’s expert and was also referred to in an exhibit introduced by Accountants; (2) the dating of the audit reports before completion of the field work was presented in earlier testimony; and (3) “the cutting and pasting of” the report of another auditor was also apparently the subject of earlier testimony. Accountants on appeal do not explain how the additional allegations significantly impacted their ability to defend the charges presented by the Board. While they argue generally they were entitled to “time to prepare their defense in the face of new allegations,” and their “addition . . . during the midst of the hearing, infringed upon

[their] ability to adequately mount a defense to the new charges,” they present no specific argument as to (1) the significance of the new allegations in the fourth amended accusation or (2) how Accountants were negatively impacted by the presentation of the new allegations while the hearing was in progress. (Cf. *Anserv, supra*, 83 Cal.App.4th at p. 208 [appellants failed to show how alleged late service of “second amended accusation included any such new charges requiring any significant change in its defense at the hearing”].) Based upon Accountants’ perfunctory argument on this issue, we may deem it abandoned. (*Nisei Farmers League v. Labor & Workforce Development Agency* (2019) 30 Cal.App.5th 997, 1018 [arguments perfunctorily asserted and without elaboration will be deemed abandoned by appellate court].)

Even were we to consider the merits of the argument raised in a perfunctory fashion by Accountants, we would find it to be without merit. The fourth amended accusation was presented on September 7, 2011 (the 15th day of the hearing), without objection from Accountants.⁹ The hearing proceeded for eight additional days thereafter; after the September 8, 2011 hearing, there was a two-month hiatus until the hearing resumed on November 7, 2011. Even assuming some significance attached to the new allegations in the fourth amended accusation, Accountants had two months to mount a defense to them between the September hearings and the resumption of proceedings in November. (Cf. *Anserv, supra*, 83 Cal.App.4th at p. 208 [appellate court rejects appellants’ objection to service of second amended accusation less than two working

⁹ At the time the fourth amended accusation was presented on September 7, 2011, counsel for Accountants noted that he had not had an opportunity to consider the new pleading or its impact on his clients, and therefore simply acknowledged its receipt. In response to inquiry from the ALJ, Accountants’ counsel stated he “might” later object to the amendment. The record does not disclose that counsel for Accountants later raised an objection to the filing of the fourth amended accusation.

days before administrative hearing because it was waived and respondent did not show how they were prejudiced].)

Accountants have failed to demonstrate they were actually prejudiced by the ALJ's allowance of the fourth amended accusation. As stated in *Niles Freeman, supra*, 161 Cal.App.4th at page 788, where the court rejected appellants' claim of due process violations in the administrative hearing because they failed to show in their briefs they were actually prejudiced thereby, "such a claim 'requires the appellant to present a factual analysis of the individual case' [citation], but no such claim was tendered to the trial court, therefore any purported as-applied due process claim is doubly forfeited: Because prejudice would require consideration of the degree to which [appellants'] case was impaired, it is a factual issue forfeited by the failure to litigate it in the trial court. [Citations.]" (See also *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 184 [appellant stipulated to continuance after first amendment to charging document, agreed to a 24-hour continuance after filing of second amendment, and was granted one-week continuance after third amendment; due process not violated by amendments where appellant gave "no coherent explanation of how any particular amendment compelled an additional continuance or otherwise prejudiced him"].)

As noted, Accountants also contend on appeal—although they did not do so in the administrative or judicial mandamus proceedings below—that the third amended and fourth amended accusations "lacked conformity with the basic requirements" because they were unsigned and undated. Because of these alleged defects, Accountants argue, these pleadings "offer no reassurance that the accusations were issued or sanctioned by the public entity as required." Addressing the merits of this forfeited argument, we reject the claim. It is true that under Government Code section 11503, subdivision (a), an accusation in general must be verified unless it is made by a public officer who acts in his or her official capacity or is made by a public official of the agency before whom the

matter is to be heard.¹⁰ But Accountants cite no authority, nor are we aware of any, that hold that a decision based upon an administrative proceeding in which there is an unsigned or undated accusation is necessarily defective, particularly where no objection to the accusation has been asserted. Amendments to conform to proof may be orally requested at the hearing and are within the broad discretion of the hearing officer to grant. (*Taylor v. City of Los Angeles* (1997) 60 Cal.App.4th 611, 617; Cal. Administrative Hearing Practice (Cont.Ed.Bar 2d ed. 2017) § 7.146, pp. 7-81 to 7-82.) And, as is the case with other objections to the amended accusations, Accountants have failed to show they were prejudiced by the alleged defects (i.e., that the amended accusations were undated and unsigned. (*Niles Freeman, supra*, 161 Cal.App.4th at pp. 790-791 [although due process claim was forfeited, appellate court rejected it on merits as well because appellant had “not demonstrated prejudice in his particular case”].) There is thus no basis for Accountants’ belated procedural challenge to the third amended and fourth amended accusations.

D. Claimed Deficiencies to Administrative Decision

Accountants argue that the ALJ’s Decision was procedurally deficient in material respects, requiring reversal. They contend that, notwithstanding the requirements of *Topanga, supra*, 11 Cal.3d 506, the factual findings contained in the ALJ’s decision were insufficient and were not supported by citation to supporting evidence; the conclusions did not refer to supporting factual findings, and “[t]here is no evidence of any analytic route in [the] decision”; and it failed to address several major issues raised at the hearing. After discussing *Topanga, supra*, we address these claims below.

¹⁰ “The accusation . . . shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.” (Gov. Code, § 11503, subd. (a).)

1. Topanga and Subsequent Decisions

Under Code of Civil Procedure section 1094.5, subdivision (b), the superior court's inquiry "extends to the questions of whether . . . there was any prejudicial abuse of discretion [by the agency]. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." The issue of the requisite findings in an administrative order or decision under Code of Civil Procedure section 1094.5, subdivision (b) was the focal point of the Supreme Court's 1974 decision in *Topanga, supra*, 11 Cal.3d 506.

In *Topanga*, the California Supreme Court considered a challenge to county action granting a variance to permit the development of a 93-space mobile home park. (*Topanga, supra*, 11 Cal.3d at p. 510.) One issue the high court addressed was the nature and extent of the findings an agency must provide in support of its administrative action. It explained that while courts had made clear that substantial evidence is necessary to support a variance granted by an administrative agency, "they have failed to clarify whether the administrative agency must always set forth findings and have not illuminated the proper relationship between the evidence, findings, and ultimate agency action." (*Id.* at p. 512, fn. omitted.)

The Court in *Topanga* held that the agency "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action." (*Topanga, supra*, 11 Cal.3d at p. 514.) The high court concluded further that an implied requirement under Code of Civil Procedure section 1094.5 is that the agency decision "set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. . . . By focusing . . . upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the

reviewing court’s attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route.” (*Topanga, supra*, at p. 515.)

The Supreme Court explained that the requirement that the agency decision include findings has several rationale. The “findings requirement serves [(1)] to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; . . . [2] to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions . . . [; 3] enable the reviewing court to trace and examine the agency’s mode of analysis . . . [¶] . . . [without having to] grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency . . . [; 4] enable the parties to the agency proceeding to determine whether and on what basis they should seek review . . . [; and 5] a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable.” (*Topanga, supra*, 11 Cal.3d at pp. 516-517, fns. omitted; see also *McAllister v. California Coastal Comm.* (2008) 169 Cal.App.4th 912, 941 (*McAllister*) [“[w]ithout appropriate findings, the trial court cannot properly perform its function in a proceeding for administrative mandate and determine whether the agency’s decision is supported by its findings and its findings are supported by the evidence”].)

The Court in *Topanga* emphasized that the findings must “bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga, supra*, 11 Cal.3d at p. 515.) But the agency’s findings “ ‘need not be stated with the formality required in judicial proceedings’ [citation].” (*Id.* at p. 517, fn. 16; see also *Environmental Protection & Information Ctr. v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 516 (*Environmental Protection*) [“[t]he findings do not need to be extensive or

detailed”].) Further, an agency’s “ ‘findings are to be liberally construed to support rather than defeat the order under review. [Citations.]” (*Carden v. Board of Registration for Professional Engineers* (1985) 174 Cal.App.3d 736, 746 (*Carden*)), and the appellate court is constrained to resolve all reasonable doubts in favor of the agency’s findings and decision (*Topanga, supra*, at p. 514).

A number of cases applying *Topanga* have rejected challenges to the sufficiency of the agency decision. In *Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547 (*Sierra Club*), the appellate court upheld the sufficiency of the Coastal Commission’s determination that there was no feasible less environmentally damaging alternative, which therefore resulted in the granting of a permit for an environmental restoration project. (*Id.* at pp. 557-558.) It held that findings supporting this determination were in the final environmental impact report; because that document was included in the administrative record, and those findings “fully explain[ed] the rationale which led the to determine there [was] no feasible less environmentally damaging alternative,” the findings satisfied the requirements of Code of Civil Procedure section 1094.5. (*Id.* at p. 558.)

Likewise, in *Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 411 (*Young*), the appellate court addressed the sufficiency of the city’s decision denying an owner’s permit to demolish a small cottage based upon the conclusion the dwelling was appropriately designated as a historic resource. The ordinance recited specific findings that were required for the city to designate specified property a historic resource. (*Id.* at p. 423.) Although the owner argued that the agency decision was deficient under *Topanga* because it “merely ‘parroted the language of the Code’ ” (*ibid.*), the court in *Young* concluded the challenged resolutions were sufficient under *Topanga*, reasoning: (1) the criteria for historic resource designation were specified in the Coronado Municipal Code, and therefore the city’s adoption of the language of the Code reciting the existence

of the criteria was sufficient under *Topanga*; (2) the ordinance specified that the property meet at least two of five identified criteria, and each criteria carried its own set of findings; (3) the city concluded that the property met two specific criteria (Criterion C and Criterion D) under the Code; and (4) the city's incorporation into the resolution of the findings contained in the ordinance using the language of the ordinance was sufficient to inform the parties of the analytic path the city took in reaching its conclusion. (*Young, supra*, at pp. 423-424; see also *McBride, supra*, 130 Cal.App.4th at pp. 530-532 [rejecting accountants' contention that Board disciplinary decision was deficient and contained boilerplate language, holding conclusion of gross negligence based on accountants' failure in specified ways to satisfy professional standards was supported by specific findings of fact].)¹¹

In *Glendale Memorial Hospital & Health Center v. State Dept. of Mental Health* (2001) 91 Cal.App.4th 129 (*Glendale Memorial*), the appellate court invalidated an administrative decision due to its lack of supporting findings. There, a group of hospitals brought a petition for writ of mandate challenging refusals by the Department of Mental Health (DMH) to reimburse them for psychiatric care provided to patients. (*Id.* at p. 131-132.) The trial court found that many of DMH's decisions to refuse reimbursement were not supported by substantial evidence, and it entered judgment

¹¹ There are a number of other decisions in which courts of appeal have rejected challenges to administrative decisions based upon the contention that they did not comply with the requirements of *Topanga*. (See, e.g., *Levi Family Partnership, L.P. v. City of Los Angeles* (2015) 241 Cal.App.4th 123 [challenge to administrative decision denying application to build eldercare facility]; *Kifle-Thompson v. State Bd. of Chiropractic Examiners* (2012) 208 Cal.App.4th 518 [licensee's challenge to board's decision to revoke chiropractic license]; *Craik v. County of Santa Cruz* (2000) 81 Cal.App.4th 880 [challenges to variances and building permits for construction of home]; *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175 [challenges to city's approval of tentative map concerning construction of condominium development].)

ordering DMH to reimburse petitioners. (*Id.* at p. 132.) The County of Los Angeles (County), which was the entity immediately liable for the reimbursement payments, appealed. (*Ibid.*) It argued alternatively that the decisions of the DMH were supported by substantial evidence and should have been upheld, or that the matter should be remanded to the administrative level with an order that DMH make findings sufficient to permit meaningful judicial review. (*Id.* at p. 139.) The appellate court agreed with the County's second argument, concluding it could not conduct a meaningful review of the DMH decisions. (*Ibid.*) The court found the administrative decisions deficient because they were based simply upon "terse statements" such that the "decisions fail[ed] to contain requisite 'findings bridging the analytic gap between the raw evidence' presented at the administrative level and DMH's 'ultimate decision[s]' as required by *Topanga*." (*Glendale Memorial, supra*, at p. 132.) It characterized the decisions as mere "boilerplate rejections of Hospitals' appeals for failure to 'substantiate that [a] patient met the medical necessity requirements found in [Cal.Code Regs. Title 9,] Section 1774.'" (*Id.* at p. 140.) Additionally, the appellate court concluded that the record failed to disclose the standard under which petitioners could have been reasonably expected to receive reimbursement. (*Id.* at pp. 140-142.) The court remanded the case to the trial court with instructions to direct the DMH to reach new decisions as to the patient reimbursement claims that were the subject to the appeal which would include specific findings in support of the decisions. (*Id.* at pp. 142-143.)

In *Los Alamitos Gen. Hosp., Inc. v. Lackner* (1978) 86 Cal.App.3d 417 (*Los Alamitos*), the appellate court found the agency decision infirm because its ambiguous findings rendered them susceptible of multiple interpretations, thereby making judicial review unfeasible. In *Los Alamitos*, petitioner hospital applied to the Department of Health (Agency) for an exemption from a certificate of public need to expand and remodel existing hospital facilities. (*Id.* at p. 421.) Five items of new equipment (three

X-ray generators, a film processor, and a full-body scanner) were included in the application as part of the hospital's expansion project. (*Ibid.*) After the Agency " 'severed' " the scanner from the application, it granted the hospital a certificate of exemption for the project. (*Ibid.*) The Agency held a hearing to determine if the scanner qualified for an exemption, and the hearing officer denied the application, concluding the piece of equipment did not qualify for an exemption as a separate project, a decision adopted by the Agency. (*Id.* at p. 422.) The hospital successfully petitioned for a writ of mandate, the trial court concluding that the Agency's " 'implied' finding that the scanner was not part of the hospital's expansion project prior to September 9, 1976 [the effective date of relevant legislation] was not supported by the record." (*Ibid.*)

The appellate court concluded that the Agency decision was defective under *Topanga, supra*, 11 Cal.3d 506. (*Los Alamitos, supra*, 86 Cal. App. 3d at pp. 425-426.) Noting that the Agency had " 'severed' the full-body scanner from the remainder of the application" when the Agency initiated the proceedings, the administrative findings denying the exemption for the scanner "were susceptible of two equally possible meanings . . . [1] the [A]gency had the unqualified power to split an exemption application into component parts so that the hearing was limited to consideration of the split 'separate' project . . . [or 2] as a matter of fact . . . the EMI scanner was not part of the project contemplated by the hospital in its original design but was an afterthought." (*Id.* at p. 425.) Because under the first meaning, the Agency decision would have been clearly erroneous, while under the second (*ibid.*), the Agency's decision would have to "be accepted by reason of the substantial evidence test . . . [, t]he Agency's failure to specifically find on the issue of the factual inclusion of the full-body scanner in the 'project' for which exemption was sought thus fail[ed] to bridge the analytic gap between the raw evidence and the ultimate administrative decision and thus preclude[d] intelligent judicial review." (*Id.* at pp. 425-426; see also *City of Rancho Palos Verdes v. City*

Council (1976) 59 Cal.App.3d 869, 889 [city council’s decision that Deep Valley Drive was not needed as a public street invalidated because finding was ambiguous because it was unknown whether the city’s council’s subconclusion was that other existing streets were adequate to absorb all traffic flow, or that there was a prospect of relocating Deep Valley Drive].)

2. *The Administrative Decision Was Not Deficient Under Topanga*

The ALJ’s Decision consisted of more than 15 pages of single-spaced text. Included in the Decision were a number of findings, discussed below, to support the ALJ’s conclusions that as to each of the eight separate causes for discipline alleged in the fourth amended Accusation, the Board had shown by clear and convincing evidence that cause existed to discipline Accountants.

We discuss below the sufficiency of the ALJ’s Decision under the requirements of *Topanga*. We will address the Decision as to each of the eight causes for discipline contained in the Accusation, describing the essential allegations by the Board regarding each such cause. Because the ALJ started his analysis with the eighth cause for discipline—perhaps because many of the findings for that cause were relevant to other causes of the Accusation—we will begin our discussion with the eighth cause.

a. Eighth Cause (Dishonesty)

The Board alleged in the eighth cause for discipline of the Accusation that Accountants “failed to provide true and accurate information and/or responses to the Board’s investigators’ questions and requests for documents.” The allegations concerning Accountants’ dishonesty included over two pages of factual material that generally concerned (1) the Board’s claim that Accountants were dishonest in their dealings with Coffman and the Board concerning Coffman’s request for production of the work papers for the 2003 and 2004 Systat audits, and (2) Ramanan was dishonest in his communications with the Board, including his testimony at the investigatory hearing that

preceded the filing of the original accusation. The Board averred that Accountants' conduct rendered them subject to discipline pursuant to section 5100, subdivision (g) in conjunction with Board Rule 52 (Cal. Code Regs., tit. 16, § 52).¹²

In ruling on the eighth cause for discipline, the ALJ provided approximately two pages of text that contained findings regarding Accountants' dealings with Coffman regarding requested work papers. The ALJ recited in the Decision that:

- (1) Coffman on July 3, 2008, made a request in writing that Accountants provide the work papers for the 2003 and 2004 Systat audits.
- (2) Accountants "[e]ventually" provided the work papers on September 16, 2008, and they gave no indication that these work papers were incomplete or inaccurate.
- (3) Coffman wrote to Accountants on December 22, 2008, and "outlined numerous deficiencies with the work papers."
- (4) Shortly thereafter, Ramanan advised Coffman for the first time that electronic work papers had been prepared but that a server in Accountants' office in Fremont had crashed, resulting in the loss of this documentation.
- (5) On January 7, 2009, Ramanan wrote to Coffman and advised that a third party (Alan David, who had sold his practice to Ramanan) and his

¹² "(a) A licensee shall respond to any inquiry by the Board or its appointed representative within 30 days. The response shall include making available all files, working papers, and other documents requested. [¶] . . . [¶] (c) A licensee shall appear in person upon written notice or subpoena issued by the Board [¶] (d) A licensee shall provide true and accurate information and responses to questions, subpoenas interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding." (Cal. Code Regs., tit. 16, § 52.)

associates had downloaded from Neeka's server its sensitive files and had removed them.

- (6) At an investigative hearing held on May 7, 2009, Ramanan testified under oath that “[a] there had been a ‘pilferage’ of confidential materials from his firm . . . [; b] hard copies of the audit work papers were stolen . . . [; c] electronic work papers were deleted[; [d] . . . backup DVDs were overwritten . . . [; e] . . . Ramanan . . . had not reported any theft to the police . . . [; f] Ramanan . . . had no personal knowledge that Alan David or others took the audit work papers or deleted files . . . [; and g] the work papers he produced in 2008 were what he was able to salvage or retrieve from storage.”
- (7) In September 2010—approximately 26 months after Coffman's initial request for audit work papers—Accountants, through their attorneys, provided the Board with approximately 2,300 pages of documents that they claimed were work papers from “ ‘e-binders’ ” which had been recovered by Neeka employee Kochiuba from deleted but not overwritten files located on older computer equipment.
- (8) The 2010 submission of workpapers “differ[ed] significantly from the work papers [Accountants] provided in 2008 . . . [in that m]any sections of the work papers that were blank in the 2008 documents [were] filled out in the 2010 submission [and o]ther sections that were partially filled out in the 2008 documents were completely filled out in the 2010 submission.”
- (9) No witness (including Kochiuba and Ramanan) “established that [Accountants'] 2010 submission was in fact the actual work papers for the 2003 and 2004 reports.”

- (10) “Ramanan’s testimony about the 2010 submission was evasive”; it was “particularly suspect given the differing accounts he gave during the course of the investigation”; “[h]e did not persuasively explain . . . why handwritten entries . . . were so heavily augmented by typewritten or computer-entered entries on the 2010 submission[; and h]e had no credible explanation for hours shown on the 2010 submission as purportedly worked by Ami Shah, Walter Hahs, and others, when no such hours were shown in the 2008 documents.”
- (11) “Ami Shah and Walter Hahs credibly testified that they did not perform all the work attributed to them by [Accountants] in the 2010 submission.”

As to the second broad issue upon which the charge of dishonesty was based—Ramanan’s account of Nalin’s role as a Neeka employee spending significant time on-site at the client Systat—the ALJ provided findings consisting of approximately one and one-half pages of text. Those findings were that:

- (1) Ramanan testified under oath on October 5, 2006, in a court proceeding, *Nalin v. Neeka Accountancy Corporation* (Superior Court of California, County of Santa Clara No. 1-06-067486), involving Nalin’s claim against Accountants for unpaid wages (the wage case), where “it was to [Accountants’] advantage to convince the court that [Nalin] performed high-level duties.”
- (2) Ramanan testified in the wage case that (a) Nalin “acted as an onsite Chief Financial Officer for Systat”; (b) Nalin “was expected to spend 80 to 100 percent of his time performing high-end financial functions”; (c) Systat paid Neeka approximately \$110,000 in 2003 for Nalin’s services, where he devoted approximately two and one-half to three days a week to Systat; (d) while at Systat, Nalin participated in management meetings as the

finance department's representative; (e) Nalin "was the top notch financial person for Systat"; (f) Nalin supervised Systat employees; and (g) Nalin played a critical role in the decision-making process of Systat.

- (3) Ramanan testified in the investigatory hearing in advance of this administrative proceeding on May 7, 2009, where "it was to [Accountants'] advantage to show that [Nalin] did not perform high-level duties at Systat," and his May 7, 2009 testimony "[stood] in stark contrast to his testimony [in the wage case]." In the investigatory hearing, Ramanan testified that Nalin (a) was not Systat's top accounting person; (b) "performed a bookkeeping role"; and (c) " 'was assisting, performing bookkeeping functions, and he was not making any decisions on accounting issues. He was not making decisions on how we treat transactions and he was mainly . . . performing bookkeeping functions. So when you say "top accounting person," top accounting person make[s] a lot of decisions on how we reflect transactions and all of that.' "
- (4) Ramanan advised Coffman in a letter nine days after this testimony that Nalin "never acted as a representative of Systat's management," the ALJ concluding that "[t]his again contradicted [Ramanan's] October 5, 2006, sworn testimony in [the wage case]."
- (5) At the administrative hearing, "Ramanan again minimized [Nalin's] role and responsibilities for Systat," and the ALJ concluded that Ramanan "did not credibly refute or reconcile his contrary testimony in [the wage case]."

Based upon the above findings, the ALJ concluded that "Ramanan's representations regarding the 2003 and 2004 Systat audit work papers and his conflicting representations regarding [Nalin's] role and responsibilities at Systat demonstrate that he has not been forthright and honest during the investigation and adjudication of this

matter.” The ALJ thus concluded that the Board had met its burden of establishing under section 5100, subdivision (g) and Board Rule 52 that there was cause to discipline Accountants for failing to provide true and accurate information to the Board.

Accountants argue on appeal that the administrative Decision did not comply with the procedural requirements of *Topanga* because there was “no evidence of any analytic route in [the] decision. The factual findings repeatedly fail to list the evidence or reasoning behind them, and the legal conclusions contain no reference to any factual findings.” This argument is without merit. It is plain, based upon the above recitation of the matters in the ALJ’s Decision, that there *were* a significant number of findings to “bridge the analytic gap between the raw evidence and ultimate decision” (*Topanga*, *supra*, 11 Cal.3d at p. 515) that the Board had established the eighth cause for discipline in the Accusation. And to the extent Accountants claim that the Decision is defective because the ALJ did not include sufficient and complete citations to the administrative record of the evidence upon which his findings was based, there is no requirement under *Topanga* for such complete record citations to supporting evidence. Here, we have no difficulty following the analytic path from the ALJ’s findings to his conclusion that Ramanan’s conflicting statements, including sworn testimony in different proceedings, concerning the 2003 and 2004 Systat audit work papers and concerning Nalin’s role in performing work on assignment at Systat, presented cause for discipline of Accountants for willful violation of Board Rule 52. (See § 5100, subd. (g).)

Further, we reject Accountants’ challenge that the ALJ’s “decision attempts to pass the statements contained in the [A]ccusation . . . off as findings with no stated justification or reasoning.” It is permissible under Government Code section 11425.50 for an administrative decision to be worded in the language of the accusation. (Gov.

Code, § 11425.50, subd. (b) [“[t]he statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings”].)¹³ While it is true that much of the ALJ’s Decision, including the section addressing the eighth cause for discipline, tracks the language of the Accusation, this does not negate the fact that the ALJ included many specific findings in support of his order sustaining the eighth cause. Where, as here, the Accusation was replete with factual allegations, the agency is not precluded from adopting many, most, or all of those factual allegations in support of its decision, assuming substantial evidence supports their adoption. (Cf. *Young, supra*, 10 Cal.App.5th at pp. 423-424 [city resolutions adopting language of ordinance, which itself contained criteria for historic resource designation, were sufficient under *Topanga*]; *Sierra Club, supra*, 19 Cal.App.4th at p. 558 [commission determination upheld where findings supporting decision were contained in final environmental impact report, which report was included in administrative record].)¹⁴

b. First Cause (Lack of Independence)

The first cause for discipline was based upon Accountants’ alleged failure to maintain independence with respect to the 2003 and 2004 Systat audits. The Board cited section 5100, subdivision (g)—“[w]illful violation of [§ 5000 et seq.] or any rule or

¹³ “The statement of the factual basis for the decision may be in the language of, or by reference to, the pleadings. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.” (Gov. Code, § 11425.50, subd. (b).)

¹⁴ As noted, *ante*, Accountants do not raise a substantial evidence challenge in this appeal.

regulation promulgated by the [B]oard”—as well as Board Rule 65 (Cal. Code Regs., tit. 16, § 65).¹⁵ The Board alleged that the audit engagements Accountants provided “were required to be performed in accordance with GAAS [Generally Accepted Auditing Standards] and GAAP [Generally Accepted Accounting Principles], which constitutes the standard of practice in the State of California.” (See Cal. Code Regs., tit. 16, § 58.)¹⁶ The Board alleged further that Accountants had failed to be independent in performing their duties in that their “employee made management decisions in the capacity of acting Chief Financial Officer for Systat.”

The ALJ in his Decision recited the requirement of Board Rule 65 that a licensee be independent in performing services in accordance with professional standards. He also cited a professional standard promulgated by the American Institute of Certified Public Accountants (AICPA)¹⁷ that provides that “[i]ndependence shall be considered to be impaired if: [¶] . . . [¶] C. During the period covered by the **financial statements** or during the period of the professional engagement, a firm, or partner or professional employee of the firm was simultaneously associated with the client as a(n) [¶] 1. Director, officer, or employee, or in any capacity equivalent to that of a member of management. . . .” (AICPA Code of Professional Conduct and Bylaws, ET § 101.02 [101-1], see <<https://www.aicpa.org/content/dam/aicpa/research/standards/>

¹⁵ “A licensee shall be independent in the performance of services in accordance with professional standards.” (Cal. Code Regs., tit. 16, § 65.)

¹⁶ “Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.” (Cal. Code Regs., tit. 16, § 58.)

¹⁷ The AICPA is “a national professional organization of [certified public accountants], whose membership is open to persons holding certified public accountant certificates issued by state boards of accountancy. [Citation.]” (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 381.)

codeofconduct/ downloadabledocuments/2013june1codeofprofessionalconduct.pdf> [as of July 15, 2019] archived at <http://perma.cc/J7BZ-LFED>.)

Applying the above Board Rule and professional standard, the ALJ concluded that during the periods covered by the 2003 and 2004 audit reports and during Accountants' engagement with Systat, Nalin "had extensive participation in important management decisions at Systat" "in the capacity of acting Chief Financial Officer of Systat." In support of these findings, the ALJ relied in part on the wage case, in which the superior court had concluded that Nalin was an exempt employee not entitled to overtime. In the wage case, as recited by the ALJ, the trial judge ruled: " 'Based upon all of the evidence presented and giving each its appropriate weight, the Court is of the opinion that [Nalin] was an integral component of [Neeka's] management and his dealings with [Neeka's] clients, and in particular, Systat, regularly involved the conveying of unsupervised high level financial information and extensive participation in important economic-related management decisions almost to the point that he could appropriately be considered the equivalent of the controller or Chief Financial Officer of such clients.' " ¹⁸ Additionally,

¹⁸ The administrative record discloses that after the superior court entered a judgment on December 4, 2006, Nalin filed an appeal. In that proceeding, Neeka submitted a respondent's brief in which it asserted, inter alia, that (1) "Nalin acted as Systat's on-site CFO"; (2) Systat's general manager "relied on Nalin to run Systat's finances, reporting, information compiling, and preparing necessary financial reports"; (3) "Systat management . . . expected Nalin to provide recommendations for improvements of financial accounting processes within Systat"; (4) "Systat expected Nalin to take the lead in solving problems relating to collectibles and receivable . . . and to make recommendations regarding account issues"; (5) "Systat expected Nalin to act as essentially its customer service representative"; (6) "Nalin participated in monthly management meetings [of Systat] to work out financial issues"; (7) Nalin "participated in meetings with bankers and key suppliers [of Systat]"; (8) "Systat management sought guidance from Nalin regarding management of cash flows, and Nalin made recommendations in that regard"; and (9) "Nalin used his own initiative to negotiate directly with suppliers on Systat's behalf." The judgment in favor of Neeka was affirmed

continued

the ALJ reiterated his discussion from the eighth cause concerning Ramanan's conflicting testimony: "[I]n *Nalin v. Neeka*, . . . it served his interest to emphasize [Nalin's] high-level management role at Systat, [which] was fundamentally at odds with his testimony in [the administrative proceeding], where it served his interest to downplay [Nalin's] duties and responsibilities. Ramanan testified under oath in both matters but presented dramatically opposed versions of [Nalin's] role at Systat."

Plainly, the ALJ's Decision on the first cause included findings to support the conclusion that Accountants failed to maintain independence in connection with the 2003 and 2004 Systat audits as required under Board Rule 65 and ET section 101.02. The ALJ (1) determined the relevant independence standards applicable to licensees; (2) concluded that Nalin had a management role at Systat that undermined Accountants' independence; and (3) identified the evidence from which that lack of independence was established (i.e., Ramanan's testimony in the wage case that Nalin had a management role at Systat, and the superior court's conclusion there that Nalin had assumed the role of Systat's chief financial officer).¹⁹ We thus have no difficulty in following the analytic path from the ALJ's findings to his conclusion that the Board established a cause for discipline based upon Accountants' lack of independence with respect to the 2003 and 2004 Systat audits. (See *Topanga*, *supra*, 11 Cal.3d at p. 515.)

by this court. (*Nalin v. Neeka* (Apr. 17, 2008, H031193 [nonpub. opn.].) In that opinion, this court noted that Ramanan was Neeka's principal witness in the trial of the wage case, and that he testified, inter alia, that Nalin " 'acted as an on-site CFO' " for Systat, where "[h]e applied 'independent judgment and analysis,' " and utilized "about '80 to 90 percent' of [his] time [at Systat] . . . 'in performing analysis and advice as compared to just inputting data[.]' " This court concluded that substantial evidence supported the superior court's conclusion that Nalin was an exempt employee not entitled to overtime."

¹⁹ There were additional findings recited by the ALJ in connection with the eighth cause, discussed *ante*, that furnished grounds for the conclusion that Nalin performed a management role with Systat that compromised Accountants' independence.

c. Second Through Fifth Causes (Negligence, etc.)

The Accusation's second cause for discipline based upon gross negligence contained a number of separate allegations. The third, fourth, and fifth causes were entirely based upon the allegations in the second cause that were incorporated by reference. And the ALJ in his Decision grouped his discussion of the second through fifth causes for discipline. Accordingly, we will discuss together these four causes and the sufficiency of the ALJ's Decision as to these causes.

The Board alleged in the second cause that Accountants had performed their audits of Systat's 2003 and 2004 financial statements "in a grossly negligent manner" in violation of section 5100, subdivision (c). This gross negligence included 14 "departures from GAAS" alleged in paragraph 23 of the Accusation. We discuss 11 of those identified departures below.²⁰

It was alleged by the Board in the third cause for discipline that Accountants had "repeatedly made negligent acts in their planning, performance, and documentation of" their audits of Systat's 2003 and 2004 financial statements. The Board alleged that this conduct was in violation of section 5100, subdivision (c).

The Board alleged in the fourth cause for discipline that Accountants' 2003 and 2004 audit reports did not conform to professional standards as required under section 5062,²¹ and thus Accountants violated section 5100, subdivision (g).

It was alleged by the Board in the fifth cause for discipline that Accountants' conduct as stated in the second cause for discipline "constitute[d] multiple willful

²⁰ The ALJ addressed each of the 14 alleged departures from GAAS in his proposed decision, concluding that the Board, as to three of them, had not sustained its burden.

²¹ "A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements." (§ 5062.)

violations of applicable professional standards” in violation of section 5100, subdivision (g) and Board Rule 58 (Cal. Code Regs., tit. 16, § 58.).

The ALJ sustained the second cause for gross negligence on the basis of 11 of the “extreme departures from GAAS” alleged by the Department. Before his discussion of the 11 grounds, the ALJ stated his finding that the 2003 and 2004 audit work papers—as embodied in Accountants’ original 2008 submission to the Board during the investigation—“were incomplete and did not demonstrate the nature, timing, extent, and results of the audit procedures performed, evidence obtained, and conclusions reached.” (See § 5097, subd. (b).) And the ALJ found that Accountants’ later (2010) submission to the Board “was not shown to be the actual work papers for the 2003 and 2004 reports.”

(1) Accusation, Paragraph 23C: 2004 report’s inaccurate statement of revenue and earnings of Systat Software UK Limited.

The Board alleged that Accountants’ 2004 Systat audit report was partially based on work performed by another auditor, who audited the reports of Systat Software UK Limited (Systat UK). Accountants allegedly had not accurately stated the total revenue and earnings of Systat UK.

The ALJ found that Accountants had acknowledged they had not accurately stated the total revenue and earnings of Systat UK in the 2004 audit report, but they “attribute[d] the misstatement to a ‘typographic error.’ ” The ALJ concluded “[t]he misstatement was more than a typographic error[;] it manifested gross negligence, negligence, a failure to exercise due care, and a failure to issue a report conforming to professional standards.”²² This was a sufficient statement of findings to provide an

²² The record shows the discrepancy was more than a typographical error. It had resulted from Accountants’ having used figures from the 2003 audit report concerning Systat UK that was supplied by another auditor, and Accountants having placed them in the 2004 audit report of Systat.

analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(2) *Accusation, Paragraph 23D: Reports dated before field work completion.*

The Board alleged that Accountants' 2003 and 2004 Systat audit reports bore dates before the field work for the respective audits had been completed.

The ALJ found this allegation to have been borne out by the evidence that relevant documents were dated after the dates of Accountants' 2003 and 2004 audit reports. The ALJ stated, as an example, that the report of the other auditor relative to Systat UK's audited financial statements was June 2, 2003, while Accountants' 2003 audit report was dated May 16, 2003.²³ Accountants argued that the date a document was faxed did not necessarily demonstrate it was not received earlier or that the numbers contained in the document were not available until that date of the fax, but the ALJ rejected these arguments. The ALJ reasoned that Accountants had the responsibility to document their field work, and they had failed to establish they had the figures "before the fax date or that field work was completed before the dates of their reports." The ALJ therefore sustained the Board's allegation.

The ALJ included findings, as well as specific reasoning why Accountants' response to the allegations should be rejected. The proposed decision included sufficient findings to provide an analytic path to the ALJ's conclusion that this allegation served as

The ALJ found that the conduct concerning the erroneous statement of Systat UK's revenues did not serve as a basis for sustaining the fifth cause (willful violation of professional standards).

²³ The record also shows that documents relevant to the 2004 audit were similarly received on dates after the date of Accountants' report, April 28, 2004.

a basis for sustaining the second through fifth causes for discipline. (See *Topanga*, *supra*, 11 Cal.3d at p. 515.)

(3) *Accusation, Paragraph 23C (sic)*.²⁴ *Failing to adequately plan and document audit procedures.*

The Board alleged that Accountants had “failed to adequately plan and document their audit procedures for the [2003 and 2004 audit] reports, including failing to audit material portions of the financial statements.” In support of this allegation, the Board cited, *inter alia*, Board Rule 68.1,²⁵ and AICPA professional standard AU § 339.04.²⁶

The ALJ concluded that Accountants had “failed to adequately plan and document their audit procedures for the 2003 and 2004 [audit] reports.” He therefore concluded that the Board’s allegation should be sustained. The foregoing quoted sentence of the ALJ was in fact a finding supporting the conclusion. (Cf. *Young*, *supra*, 10 Cal.App.5th at pp. 423-424; *Sierra Club*, *supra*, 19 Cal.App.4th at p. 558.) While the ALJ’s statement

²⁴ The Accusation at paragraph 23 contains two subparagraphs that are labeled C and two that are labeled D.

²⁵ “Working papers are the licensee’s records of the procedures applied, the tests performed, the information obtained and the pertinent conclusions reached in an audit They include, but are not limited to, audit of other programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents and schedules or commentaries prepared or obtained by the licensee.” (Cal. Code Regs., tit. 16, § 68.1(a).)

²⁶ “Audit documentation is an essential element of audit quality. Although documentation alone does not guarantee audit quality, the process of preparing sufficient and appropriate documentation contributes to the quality of an audit.” (AICPA Auditing Standards, AU § 339.04, <https://www.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocdownlo/au-00339.pdf>. Hereafter, all references to professional standards promulgated by the AICPA will be to the AU section number; the professional standards are located on the AICPA’s website, <<https://www.aicpa.org/content/aicpa>> [as of July 15, 2019] archived at <http://perma.cc/4MAW-WX75>.)

mirrors the Board's allegation in the Accusation, this characteristic does not render the decision infirm under *Topanga*, and is expressly permitted by statute. (See Gov. Code, § 11425.50, subd. (b).) The allegation, adopted by the ALJ, is itself an appropriate finding supporting the conclusion.

Moreover, liberally construing the decision (see *Carden*, *supra*, 174 Cal.App.3d at p. 746), we note that the ALJ made additional findings supportive of this allegation that were presented in the earlier "FACTUAL FINDINGS" section and they must be considered here in assessing Accountants' challenge to the adequacy of the Decision. The ALJ noted in that section of the Decision that key issues included "whether certain processes and analyses were conducted, when they were conducted, who did them, and when," and the "failure [of Accountants] to maintain complete and accurate documentation and work papers is key to these issues." The ALJ found that "[Accountants] were unable to document the nature, timing, extent, and results of the audit procedures performed, evidence obtained, and conclusions reached, and were unable to establish the identity of the persons who performed and reviewed the work. [Accountants'] 2008 submission [of purported work papers] was incomplete, with large portions completely blank, and failed to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in the Systat audit engagements."²⁷ The ALJ found further that Accountants had failed to fill the gaps in their work papers. Citing section 5097, subdivision (c), the ALJ stated, "[t]he failure of [the] audit documentation to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in an engagement [shall] raise[] a [rebuttable]

²⁷ The ALJ questioned whether Accountants' second (2010) submission of purported work papers was genuine, but he stated that, assuming that it was, it also "failed to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in the Systat audit engagements."

presumption that the procedures were not applied, tests were not performed, information was not obtained, and relevant conclusions were not reached.['] ” (§ 5097, subd. (c).)

The ALJ correctly observed that Accountants had the burden to present evidence rebutting the presumption, and he concluded that “they have been unable to do so. Notably, Ramanan’s testimony on these issues was evasive, convoluted, and ultimately not persuasive.” (The ALJ’s additional findings under the “FACTUAL FINDINGS” heading of the Decision as stated in this paragraph are hereafter collectively referred to as the ALJ’s Documentation Findings.)

Concluding that the allegation—Accountants’ failure to adequately plan and document audit procedures—had merit, the ALJ held that the Board had established gross negligence (second cause), failure to exercise due professional care (third cause), failure to issue report conforming to professional standards (fourth cause), and willful violation of professional standards (fifth cause). The ALJ’s Decision included sufficient findings to provide an analytic path to the ALJ’s conclusion that this allegation served as a basis for sustaining the second through fifth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(4) *Accusation, Paragraph 23D (sic): Failing to obtain, document and evaluate evidential matter.*

The Board alleged that Accountants had “failed to adequately obtain, document, and evaluate evidential matter to support [their 2003 and 2004 audit reports], including failing to index or correlate the documentation to [Systat’s] financial statements.” The Board cited, inter alia, Board Rule 68.1 (see fn. 25, *ante*), and AICPA professional standards AU § 339.03²⁸ and § 339.04 (see fn. 26, *ante*).

²⁸ “The auditor must prepare audit documentation in connection with each engagement in sufficient detail to provide a clear understanding of the work performed

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The ALJ concluded that Accountants had “failed to adequately obtain, document, and evaluate evidential matter to support the [2003 and 2004 audit] reports.” This quoted sentence was a finding supporting the ALJ’s conclusion, and it was permissible under Government Code section 11425.50, subdivision (b). In support of the finding, the ALJ made subfindings that (1) Accountants’ first (2008) submission of work papers contained “no planning material,” (2) “the general procedures audit form for both the 2003 and 2004 audits were blank,” and (3) Accountants “failed to index or correlate the documentation to the financial statements.” The ALJ concluded based upon these findings that the Board’s allegations should be sustained.

Concluding that the allegation—Accountants’ failure to obtain, document, and evaluate evidential matter to support their audit reports—had merit, the ALJ held that the Board had established gross negligence (second cause), failure to exercise due professional care (third cause), and failure to issue report conforming to professional standards (fourth cause).²⁹ The ALJ’s Decision included sufficient findings—including

(including the nature, timing, extent, and results of audit procedures performed), the audit evidence obtained and its source, and the conclusions reached. Audit documentation: [¶] a. Provides the principal support for the representation in the auditor’s report that the auditor performed the audit in accordance with generally accepted auditing standards. [¶] b. Provides the principal support for the opinion expressed regarding the financial information or the assertion to the effect that an opinion cannot be expressed.” (AICPA Auditing Standards, AU § 339.03.)

²⁹ The ALJ’s Decision is silent as to whether the Board established that the allegations in paragraph 23D (*sic*) of the Accusation was a basis for finding a willful violation of professional standards (fifth cause for discipline). We therefore conclude, by such silence, that the ALJ found that the Board had not established the fifth cause for discipline based upon this allegation. Likewise, the ALJ’s Decision is silent as to whether the Board established that the allegations in paragraphs 23E through 23K of the Accusation were each a basis for finding a willful violation of professional standards, and we deem such silence to mean that the ALJ found that the Board did not establish, based upon these allegations, the fifth cause for discipline. Further, we note that the conclusions of the ALJ as to the allegations in paragraph 23D (*sic*) and paragraphs 23E

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the ALJ's Documentation Findings described above—to provide an analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(5) *Accusation Paragraph 23E: Failing to perform planned, specific procedures re accounts receivable for the audit reports.*

The Board alleged that Accountants had “failed to perform planned, specific procedures for analyzing and testing the accounts receivable for the [2003 and 2004 audit] reports” of Systat’s financial statements. The Board cited, *inter alia*, AICPA professional standards AU §§ 230.01, 230.02, 330.09, and § 508.24.³⁰

through 23K of the Accusation do not specifically contain the conclusion—using the language of the fourth cause for discipline—that Accountants’ “auditor’s reports [did] not conform to professional standards.” But it is plain from a reading of the entire Decision that the ALJ in fact concluded that the conduct alleged in paragraph 23D (*sic*) and paragraphs 23E through 23K of the Accusation established Accountants’ failure to issue audit reports conforming to professional standards. Thus, liberally construing the decision (see *Carden, supra*, 174 Cal.App.3d at p. 746), we conclude that the ALJ found that the Board established that the allegations in paragraph 23D (*sic*) and paragraphs 23E through 23K of the Accusation constituted bases for sustaining the fourth cause for discipline against Accountants.

³⁰ “The third general standard is: [¶] The auditor must exercise due professional care in the performance of the audit and the preparation of the report. [¶] This standard requires the independent auditor to plan and perform his or her work with due professional care. Due professional care imposes a responsibility upon each professional within an independent auditor's organization to observe the standards of field work and reporting.” (AICPA Auditing Standards, AU § 230.01-230.02, *fn. omitted*.) “The auditor should assess whether the evidence provided by confirmations reduces audit risk for the related assertions to an acceptably low level. In making that assessment, the auditor should consider the materiality of the account balance and his or her inherent and control risk assessments. When the auditor concludes that evidence provided by confirmations alone is not sufficient, additional procedures should be performed. For example, to achieve an appropriately low level of audit risk related to the completeness and existence assertions for accounts receivable, an auditor may perform sales cutoff tests in addition to confirming accounts receivable.” (AICPA Auditing Standards, AU § 330.09.) “Common restrictions on the scope of the audit include those applying to

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The ALJ concluded that Accountants had “failed to perform planned, specific procedures for analyzing and testing the accounts receivable for the 2003 and 2004 [audit] reports.” Although this was the precise language of the Accusation, it was nonetheless a proper finding that we may consider in support of the ALJ’s conclusion that “[Accountants] were grossly negligent, negligent, and failed to exercise due professional care.” (See Gov. Code, § 11425.50, subd. (b).) These findings—coupled with the ALJ’s Documentation Findings described above—are sufficient to provide us with an analytic path to the ALJ’s conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(6) *Accusation Paragraph 23F: Failing to adequately plan re nature, timing, and extent of auditing procedures for the 2003 and 2004 audit reports.*

The Board alleged that Accountants had “failed to adequately plan for determining the nature, timing, and extent of auditing procedures for the [2003 and 2004 audit] reports.” The Board cited, inter alia, AICPA professional standards AU §§ 150.01, 150.02, and 230.02 (see fn. 30, *ante*).³¹

The ALJ concluded that Accountants “did not adequately plan for the nature, timing, and extent of auditing procedures for the 2003 and 2004[audit] reports.”

the observation of physical inventories and the confirmation of accounts receivable by direct communication with debtors.” (AICPA Auditing Standards, AU § 508.24, fn. omitted.)

³¹ “An independent auditor plans, conducts, and reports the results of an audit in accordance with generally accepted auditing standards” (AICPA Auditing Standards, AU § 150.01.) “*Standards of Field Work* [¶] 1. The auditor must adequately plan the work and must properly supervise any assistants. [¶] 2. The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures. . . .” (AICPA Auditing Standards, AU § 150.02.)

Although this was nearly the same language used by the Board in the Accusation, it was a proper finding that we may consider in support of the ALJ's conclusion that "[Accountants] were grossly negligent, negligent, and failed to exercise due professional care." (See Gov. Code, § 11425.50, subd. (b).) This finding regarding Accountants' planning for the nature, timing, and extent of audit procedures—coupled with the ALJ's Documentation Findings described above—is sufficient to provide us with an analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(7) Accusation Paragraph 23G: Failing to perform internal control work for the 2003 and 2004 audit reports.

The Board alleged in the Accusation that Accountants had "failed to perform internal control work for the [2003 and 2004 audit] reports, including failing to document the controls, failing to test the controls, and failing to assess control risk." The Board cited, *inter alia*, AICPA professional standards AU §§ 150.02 (see fn. 31, *ante*).

The ALJ concluded that Accountants had "failed to perform internal control work for the 2003 and 2004 [audit] reports, including failing to document the controls, failing to test the controls, and failing to assess control risk." Although this was the identical language used by the Board, it was a proper finding that we may consider in support of the ALJ's conclusion that "[Accountants] were grossly negligent, negligent, and failed to exercise due professional care." (See Gov. Code, § 11425.50, subd. (b).) This finding regarding Accountants' failure to perform internal control work or to document the controls—coupled with the ALJ's Documentation Findings described above—is sufficient to provide us with an analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(8) *Accusation Paragraph 23H: Failing to obtain legal representation letters for the 2003 and 2004 audit reports.*

It was alleged by the Board that Accountants had “failed to receive legal representation letters for the [2003 and 2004 audit] reports.” The Board cited, *inter alia*, AICPA professional standards AU §§ 230.01 and 230.02 (see fn. 30, *ante*), and 337.13.³²

The ALJ concluded that Accountants had “failed to receive legal representation letters for the [2003 and 2004 audit] reports.” Again, although this was the identical language used by the Board, it was a finding that we may consider in support of the ALJ’s conclusion that “[Accountants] were grossly negligent, negligent, and failed to exercise due professional care.” (See Gov. Code, § 11425.50, subd. (b).) This finding regarding Accountants’ failure to obtain legal representation letters—coupled with the ALJ’s Documentation Findings described above—is sufficient to provide us with an analytic path to the ALJ’s conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

³² “A lawyer’s refusal to furnish the information requested in an inquiry letter either in writing or orally . . . would be a limitation on the scope of the audit sufficient to preclude an unqualified opinion A lawyer’s response to such an inquiry and the procedures set forth in paragraph .05 provide the auditor with sufficient audit evidence to satisfy himself concerning the accounting for and reporting of pending and threatened litigation, claims and assessments. The auditor obtains sufficient audit evidence to satisfy himself concerning reporting for those unasserted claims and assessments required to be disclosed in financial statements from the foregoing procedures and the lawyer’s specific acknowledgement of his responsibility to his client in respect of disclosure obligations” (AICPA Auditing Standards, AU § 337.13.)

(9) Accusation Paragraph 23I: Failing to consider audit risk at individual account balance or class of transactions for the 2003 and 2004 audit reports.

It was alleged by the Board that Accountants had “failed to consider the audit risk at the individual account balance or class of transactions level for the [2003 and 2004 audit] reports and failed to prepare a materiality determination for the [2003 audit] report.” The Board cited, *inter alia*, AICPA professional standards AU §§ 312.12, and 312.25.³³

The ALJ concluded that Accountants had “failed to consider the audit risk at the individual account balance or class of transactions level for the 2003 and 2004 [audit] reports] and [had] failed to prepare a materiality determination for the 2003 [audit] report.” Although this was the identical language used by the Board, it was a finding that we may consider in support of the ALJ’s conclusion that “[Accountants] were grossly negligent, negligent, and failed to exercise due professional care.” (See Gov. Code, § 11425.50, subd. (b).) This finding concerning Accountants’ failure to consider the audit risk at the individual account balance or class of transactions level—coupled with

³³ “Audit risk is a function of the risk that the financial statements prepared by management are materially misstated and the risk that the auditor will not detect such material misstatement. The auditor should consider audit risk in relation to the relevant assertions related to individual account balances, classes of transactions, and disclosures and at the overall financial statement level. The auditor should perform risk assessment procedures to assess the risks of material misstatement both at the financial statement and the relevant assertion levels. The auditor may reduce audit risk by determining overall responses and designing the nature, timing, and extent of further audit procedures based on those assessments.” (AICPA Auditing Standards, AU § 312.12, fns. omitted.) “Detection risk relates to the substantive audit procedures and is managed by the auditor’s response to risk of material misstatement. . . . [T]he auditor should perform substantive procedures for all relevant assertions related to material classes of transactions, account balances, and disclosures.” (AICPA Auditing Standards, AU § 312.25.)

the ALJ’s Documentation Findings described above—is sufficient to provides us with an analytic path to the ALJ’s conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(10) *Accusation Paragraph 23J: Failing to make fraud inquiries of management for the 2003 and 2004 audit reports.*

It was alleged by the Board that Accountants had “failed to make inquiries of management and others within the entity regarding fraud for the [2003 and 2004 audit] reports.” The Board cited, inter alia, AICPA professional standards AU §§ 110.02, 150.01 (see fn. 31, *ante*), and 361.19.³⁴

The ALJ concluded that Accountants had “failed to make inquiries regarding fraud for the 2003 and 2004 [audit] reports.” Although this was similar language to that used by the Board, it was a finding that we may consider in support of the ALJ’s conclusion that “[Accountants] were grossly negligent, negligent, and failed to exercise due professional care.” (See Gov. Code, § 11425.50, subd. (b).) This finding concerning Accountants’ failure to inquire of management concerning fraud—coupled with the

³⁴ “The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Because of the nature of audit evidence and the characteristics of fraud, the auditor is able to obtain reasonable, but not absolute, assurance that material misstatements are detected. . . .” (AICPA Auditing Standards, AU § 110.02, fns. omitted.) “Section 314 provides guidance about how the auditor obtains an understanding of the entity and its environment, including its internal control. In performing that work, information may come to the auditor’s attention that should be considered in identifying risks of material misstatement due to fraud. As part of this work, the auditor should perform the following procedures to obtain information that is used . . . to identify the risks of material misstatement due to fraud: [¶] a. Make inquiries of management and others within the entity to obtain their views about the risks of fraud and how they are addressed. . . .” (AICPA Auditing Standards, AU § 316.19.)

ALJ's Documentation Findings described above—is sufficient to provide us with an analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

(11) *Accusation Paragraph 23K: Failing to perform analytic procedures in planning and review stages of the 2003 and 2004 audit reports.*

It was alleged by the Board that Accountants had “failed to perform analytical procedures in the planning and overall review stages of the [2003 and 2004 audit] reports.” The Board cited AICPA professional standards AU §§ 329.01 and 329.04.³⁵

The ALJ concluded that Accountants had “failed to perform analytical procedures in the planning and overall review stages of the 2003 and 2004 [audit] reports.”

Although this was the same language to that used by the Board, it was a finding that we may consider in support of the ALJ's conclusion that “[Accountants] were grossly negligent, negligent, and failed to exercise due professional care.” (See Gov. Code, § 11425.50, subd. (b).) This finding concerning Accountants' failure to perform analytical procedures in the audit planning and overall review stages—coupled with the ALJ's Documentation Findings described above—is sufficient to provide us with an

³⁵ “This section provides guidance on the use of analytical procedures and requires the use of analytical procedures in the planning and overall review stages of all audits.” (AICPA Auditing Standards, AU § 329.01.) “Analytical procedures are used for the following purposes: [¶] *a.* To assist the auditor in planning the nature, timing, and extent of other auditing procedures [¶] *b.* As a substantive test to obtain audit evidence about particular assertions related to account balances or classes of transactions [¶] *c.* As an overall review of the financial information in the final review stage of the audit[.] [¶] Analytical procedures should be applied to some extent for the purposes referred to in (a) and (c) above for all audits of financial statements made in accordance with generally accepted auditing standards. In addition, in some cases, analytical procedures can be more effective or efficient than tests of details for achieving particular substantive testing objectives.” (AICPA Auditing Standards, AU § 329.04.)

analytic path to the ALJ's conclusion that this allegation served as a basis for sustaining the second through fourth causes for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

d. Sixth Cause (Inadequate Audit Documentation)

The Board alleged in the sixth cause for discipline that Accountants had “failed to comply with audit working paper and documentation requirements [in that t]he working papers did not evidence the procedures applied, test[s] performed, or pertinent conclusions reached for material portions of the [2003 and 2004 audit] reports.” It alleged that such conduct was a ground for discipline under subdivisions (e) and (g) of section 5100 in conjunction with section 5097 (see fn. 5, *ante*), and Board Rules 68.1 and 68.2 (Cal. Code Regs., tit. 16, §§ 68.1, 68.2).

The ALJ, referencing paragraph 9 of his findings of fact (i.e., the ALJ's Documentation Findings detailed above), concluded that Accountants had “failed to comply with audit work paper and documentation requirements. The work papers did not evidence the procedures applied, tests performed, or pertinent conclusions reached for material portions of the 2003 and 2004 [audit] reports.” The ALJ reiterated his findings that Accountants' original (2008) submission of work papers was incomplete and that Accountants had not established that the second (2010) submission constituted genuine audit work papers and documentation. And the ALJ found—citing Board Rule 68.1 (see fn. 25, *ante*)—that Accountants had “failed to maintain reasonable procedures for the safe custody of work papers and failed to retain working papers for a period sufficient to meet the needs of their practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.” The ALJ therefore concluded that the Board had established cause to discipline Accountants under section 5100, subdivision (g) and Board Rules 68.1 and 68.2.

Although the ALJ's Decision was based in part upon a determination that used the Board's language, these were appropriate findings upon which the ALJ sustained the sixth cause. (See Gov. Code, § 11425.50, subd. (b).) The ALJ made additional findings regarding (1) the incomplete nature of the 2008 submission, (2) the absence of proof of the genuineness of the 2010 submission, and (3) Accountants' failure to maintain reasonable records retention policies. These findings—coupled with the ALJ's Documentation Findings described above—provide us with an analytic path to the ALJ's conclusion sustaining the sixth cause for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

e. Seventh Cause (Unregistered Firm Name)

The Board alleged in the seventh cause for discipline that Ramanan had failed to register the firm name of Neeka Accountancy Corporation with the Board while he was engaging in the public accountancy, as required under section 5060.³⁶ The Board alleged that Neeka was not registered until on or about March 22, 2004, but that Ramanan had been practicing under the Neeka firm name since as least May 16, 2003. This conduct was alleged as a basis for discipline under section 5100, subdivision (g) in conjunction with section 5060.

The ALJ found that “Ramanan did not register . . . Neeka Accountancy Corporation with the [B]oard until March 22, 2004[, but h]e had practiced accounting under that name since around May 2003.” The ALJ therefore concluded that the Board

³⁶ “(a) No person or firm may practice public accountancy under any name which is false or misleading. [¶] (b) No person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice issued by the board. [¶] (c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a). [¶] (d)” (§ 5060.)

had established cause to discipline Accountants under sections 5051 and 5100, subdivision (g). We have no difficulty traveling the analytic path from these findings to the ALJ's conclusion sustaining the seventh cause for discipline. (See *Topanga, supra*, 11 Cal.3d at p. 515.)

3. Accountants' Other Arguments

Accountants also challenge the sufficiency of the ALJ's Decision based upon its alleged failure to address several major issues from the administrative hearing. They take issue with the fact that, although a total of nine witnesses were called to testify at the administrative hearing, the ALJ specifically referred to only four of them in his Decision. Accountants argue that the ALJ did not even refer to testimony and credibility of four key witnesses, including the two accounting experts and the Board investigator, all of whom provided extensive testimony. Citing Government Code section 11425.50, they urge that credibility findings of witnesses in the decision—in addition to the credibility findings the ALJ made concerning Ramanan—were required.

These contentions lack merit. Accountants cite no authority for the proposition that an agency's decision is infirm under *Topanga* where—although containing findings that permit the reviewing court to ascertain “the analytic route the administrative agency traveled from evidence to action” *Topanga, supra*, 11 Cal.3d at p. 515)—it omits discussion of certain evidence that a party deems significant. (See *McNeil's Inc. v. Contractors' State License Bd.* (1968) 262 Cal.App.2d 322, 327 [agency's failure to address specific evidentiary facts unnecessary to conclusion in administrative decision did not constitute error].) As the Supreme Court has explained, “findings do not need to be extensive or detailed” (*Environmental Protection, supra*, 44 Cal.4th at p. 516), and they “‘need not be stated with the formality required in judicial proceedings’ [citation].” (*Topanga, supra*, at p. 517, fn. 16.)

Further, Government Code 11425.50 does not support Accountants' claim that the ALJ's decision was infirm because it did not address the credibility of witnesses (besides Ramanan). Government Code 11425.50, subdivision (b), reads in relevant part: "If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it." Here, the decision was not substantially based upon the credibility of witnesses *other than* Ramanan, so the ALJ was not required to include an assessment of those witnesses' credibility in the Decision. Further, the credibility of Ramanan was significant to the Decision—specifically concerning the subjects of the work papers for the 2003 and 2004 audits and the role employee Nalin played in performing on-site work for the client Sysstat. But the ALJ specifically addressed such credibility of Ramanan in his Decision, and that credibility determination was chiefly based upon matters other than the testimony of other witnesses (i.e., Ramanan's own testimony and statements at different times that were deemed by the ALJ to have been conflicting).

Accountants also argue that the ALJ improperly omitted from his Decision any discussion addressing their assertion that Ramanan's testimony in the wage case "could not be cross-applied to the instant case." In making this argument, Accountants implicitly attack the admissibility in the administrative proceeding of Ramanan's prior testimony in the wage case. It must be noted, however, that at the administrative hearing, Accountants *stipulated* to the admissibility of the court transcript containing Ramanan's testimony in the wage case. There is no basis for their challenge to the Decision that the ALJ failed to address the assertion that Ramanan's prior testimony "could not be cross-applied to the instant case."

4. Conclusion Regarding Sufficiency of ALJ's Decision

The Supreme Court's decision in *Topanga, supra*, 11 Cal.3d 506 requires that the agency's decision provide findings to "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Id.* at p. 515.) This is not an onerous requirement or one that compels the agency to act with the formality required in a judicial proceeding. (*Id.* at p. 517, fn. 16.) But it subserves goals such as "enabl[ing] the reviewing court to trace and examine the agency's mode of analysis . . . [so that the court need not have to] grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual or legal conclusions supported the [agency's] ultimate order or decision." (*Id.* at pp. 516-517, fn. omitted.)

The ALJ's Decision here consists of 15 pages of single-spaced text with numerous findings, located both under a heading captioned "FACTUAL FINDINGS" and elsewhere in the discussion of the eight specific causes for discipline alleged in the Accusation. The Decision also includes references to relevant statutes, Board Rules, and professional standards. One of Accountants' key objections to the Decision is that it includes as its findings a number of allegations from the Accusation that are quoted or paraphrased in the Decision. But as discussed above, these allegations adopted by the ALJ are themselves factual findings that support the conclusions reached in the Decision, and the ALJ's quotation or paraphrasing of the allegations is expressly permitted by statute. (See Gov. Code, § 11425.50, subd. (b).)

It is readily apparent from a review of the Decision as a whole that the conclusions reached by the ALJ are in large measure based upon significant deficiencies found in Accountants' work papers and other audit documentation. These deficiencies are discussed in some detail in three pages of the Decision identified and detailed above as the ALJ's Documentation Findings. The ALJ plainly found that the work papers submitted by Accountants in 2008 to the Board during its investigation were incomplete

and inadequate in a number of respects, and Accountants failed to establish that their second (2010) submission consisted of genuine work papers at all. These findings resulted in the application by the ALJ of the rebuttable presumption that proper audit “procedures were not applied, tests were not performed, information was not obtained, and relevant conclusions were not reached.” (§ 5097, subd. (c).) And the ALJ concluded that it was Accountants’ burden “to rebut that presumption, and they [were] unable to do so.”

The Decision provides sufficient, detailed findings to permit a reviewing court to travel the analytic path to the conclusions the ALJ reached in sustaining the eight causes for discipline alleged in the Accusation. (*Topanga, supra*, 11 Cal.3d at pp. 514-515.) Contrary to Accountants’ contentions, we do not view the ALJ’s findings to be broadbrush, conclusory or otherwise inadequate. (See *Environmental Protection, supra*, 44 Cal.4th at p. 516 [“[t]he findings do not need to be extensive or detailed”]; see also *Craik, supra*, 81 Cal.App.4th at p. 891 [findings need “not expose every minutia”].) In reviewing the Decision as a whole and resolving all reasonable doubts in favor of the Board’s finding and Decision (*Topanga, supra*, at p. 514), we have no difficulty determining “the analytic route the [Board] traveled from evidence to action” in sustaining the eight causes for discipline alleged in the Accusation (*id.* at p. 515). Accordingly, we reject Accountants’ claim that the ALJ’s Decision is deficient under *Topanga*.³⁷

³⁷ We observe that in the legal conclusions section of the Decision, the ALJ found that Accountants had “shown some mitigating circumstances. It would be appropriate for the [B]oard to consider those circumstances should [Accountants] petition for reinstatement of their licenses.”

E. Claimed Judicial Error in Making New Findings

Accountants contend that the trial court erred by “making numerous new factual determinations . . . in order to support and cure a flawed administrative decision.” Referencing their arguments concerning the invalidity of the ALJ’s Decision which we have addressed, *ante*, Accountants assert that the court, instead of recognizing the Decision’s “defects and setting the flawed administrative decision aside, . . . sought independent findings to cure the [Decision’s] inadequate findings.” As an example of the claimed error, Accountants argue that the trial court, in addressing the ALJ’s Decision regarding the second cause for discipline (gross negligence), “suppl[ied] the legal standard” and “relied on findings established from information provided by the testimony of [the Board’s accounting expert,] Barry Franzen.” We conclude that Accountants’ arguments are without merit.

First, we observe that Accountants did not object below to the trial court allegedly making its own findings in an effort to cure what Accountants claim to have been a defective Board Decision. Had this objection been presented in a timely fashion, it is conceivable that the trial court could have effectively addressed it. (*Doers, supra*, 23 Cal.3d at pp. 184-185, fn. 1; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 [objection to ambiguities in proposed statement of decision].) “ “ “ “The purpose of the general doctrine of waiver [or forfeiture] is to encourage a [party] to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had” ’ [Citation.]” ’ ” (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 (*Keener*).) We therefore conclude that Accountants have forfeited this procedural challenge.

Second, we observe that the foundation upon which Accountants’ argument is based is that the court made new findings to support a Decision Accountants claim to have been “flawed,” “inadequate,” “defective,” and “arbitrary.” The foundation for

Accountants’ argument is therefore undermined by our rejection, *ante*, of their numerous claims that the ALJ’s Decision was defective or inadequate. Simply stated, since the Decision was not flawed and was in compliance with the requirements for administrative decisions as enunciated by the Supreme Court in *Topanga, supra*, 11 Cal.3d 506, there is no merit to Accountants’ contention that the trial court made new findings to “cure a flawed administrative decision.”

Third, the trial court, in any event, committed no error. In light of the vested right implicated by the Board’s action, the trial court properly reviewed the Decision pursuant to the independent judgment standard. (*Hughes, supra*, 17 Cal.4th at p. 789; *Clare, supra*, 10 Cal.App.4th at p. 300.) In the exercise of “its own independent judgment, [the superior] court is free to substitute its own findings after first giving due respect to the agency’s findings.” (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 818; see also *Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077.) Thus, for instance, in a mandamus proceeding in which the petitioner asserted that the trial court had erred by applying the substantial evidence standard, the appellate court disagreed, concluding that the trial court had, in fact, applied the independent judgment standard, as evidenced by the court indicating “that it independently reviewed the facts, made its own conclusions, and did not ‘just [take] the [agency’s] word for it.’ ” (*Coastal Environmental Rights Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 189.)

Accountants suggest—by taking issue with the trial court’s reference to findings based upon the testimony of the Board’s expert—that the court, in performing such independent review, was prohibited from relying on and/or citing evidence that was not specifically relied on or cited by the agency in its administrative decision. But Accountants cite no authority for this proposition, and it is contrary to (a) the notion that the trial court *independently* reviews the evidence, including assessing on its own the

credibility of witnesses (*Rodriguez v. City of Santa Cruz* (2014) 227 Cal.App.4th 1443, 1452-1454 and (b) the principle that an administrative agency’s “findings do not need to be extensive or detailed” (*Environmental Protection, supra*, 44 Cal.4th at p. 516).

A principal case upon which Accountants rely, *American Funeral Concepts v. Board of Funeral Directors & Embalmers* (1982) 136 Cal.App.3d 303 (*American Funeral Concepts*), does not support their position. There, the petitioner had his license revoked after disciplinary proceedings and was unsuccessful in his petition for writ of mandamus. (*Id.* at p. 306.) The appellate court reversed, concluding that the agency decision did not satisfy the requirements of *Topanga, supra*, 11 Cal.3d 506. (*American Funeral Concepts, supra*, at pp. 309-310.) The court also reversed because “[t]he trial court sought to fill the breach by supplying its own finding . . . [based upon] an alternate ground of violation of [Bus. & Prof. Code] section 7735, which was charged by the agency but not made a basis for discipline,” concluding that “the court cannot cure the agency’s improper finding. [Citation.]” (*Id.* at p. 311.) Here, unlike in *American Funeral Concepts*, the trial court did not make findings different from those of the Board. And here, unlike in *American Funeral Concepts*, the trial court did not make findings on alternative grounds for discipline that were not included in the ALJ’s Decision.³⁸

³⁸ Other cases relied on by Accountants similarly do not support their argument that the trial court erred by supplying findings that were not the bases for the ALJ’s Decision. As noted, the trial court properly applied the independent judgment standard in reviewing the Board’s action. Several of Accountants’ inapposite cases involved the trial court’s applying the substantial evidence standard in considering the agency action. (See *Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 926-929 [trial court erroneously applied substantial evidence standard]; *McAllister, supra*, 169 Cal.App.4th at p. 921; *Kirkorowicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 986 (*Kirkorowicz*); *J.L. Thomas, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 916, 923, fn. 5, 926; *Black v. State Personnel Board* (1955) 136 Cal.App.2d 904, 910 (*Black*).) (We note that Accountants included in their quotation from *Kirkorowicz* the erroneous parenthetical “[independent judgment]” when the immediately preceding sentence of the

continued

We conclude that Accountants' contention that the trial court erred by supplying new factual determinations to support a flawed Decision is forfeited, and that, in any event, it is without merit.

F. Claimed Judicial Error in Delegating Judicial Duties

Accountants contend that the trial court improperly delegated its judicial duties by ordering the Board to prepare a proposed statement of decision that included specific references to exhibits supporting any factual findings, when the court had not adequately supported its tentative decision in the first instance. They challenge trial court actions occurring at two separate times in the procedural history of the case. They object first to the trial court's action in the filing of its tentative decision on September 12, 2013. Specifically, Accountants object to the court's ordering the Board "to prepare a proposed statement of decision consistent with th[e] tentative decision, complete with specific references to the exhibits in the administrative record to support any proposed factual findings." They argue that this request "demonstrate[d] an abandonment of the duties and requirements assigned to [the court] during an administrative mandate proceeding."

Further, Accountants object to action taken by the court approximately seven months later. After the court had reopened the case to permit Nalin's testimony and had heard further argument from counsel on April 25, 2014, it requested that both parties "present[] proposed statements of decision from [each party's] perspective, incorporating [the party's] interpretation of the Nalin testimony." Accountants argue that, although it is common to have proposed statements of decision in administrative mandamus cases, "the requested [statements of] decisions here exceed[ed] the norm." Although argued somewhat obliquely, it is apparently Accountants' position that in this instance, "[t]he

opinion referenced the substantial evidence standard. We assume that this was an oversight by Accountants' counsel.)

resulting decision, if derived from one party and not the court’s review, fail[ed] to establish that [the] Superior Court conducted an independent review of the evidence.” We reject Accountants’ claim of error.

First, no relief can be sought from the order in the trial court’s September 12, 2013 tentative decision for the Board to prepare a proposed statement of decision. It is beyond question that a court’s tentative decision “is not binding on the trial court and may be modified” by the court. (*Wallis v. PHL Associates, Inc.* (2013) 220 Cal.App.4th 814, 826.) As provided in rule 3.1590(b) of the California Rules of Court: “The tentative decision does not constitute a judgment and is not binding on the court. If the court subsequently modifies or changes its announced tentative decision, the clerk must serve a copy of the modification or change on all parties that appeared at the trial.” Therefore, “[b]ecause the tentative decision is not binding on the court, the court remains free to change any part of its ruling up until the statement of decision itself is signed and filed.” (*In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004, 1029-1030.)

The trial court acknowledged this point on November 22, 2013—some months after it filed its original statement of decision—when it permitted Accountants leave to present Nalin’s live testimony and ruled that it would issue a new tentative decision after receiving that testimony. And the court, in fact, vacated its September 12, 2013 tentative decision when it permitted Nalin’s testimony, ruling: “[U]pon conclusion of that testimony, the evidence will be in, and we’ll be back[;] . . . I think it’s incumbent on me to render another tentative decision or some variant pursuant to Rule of Court 3.1590.” Thus, since the judgment appealed from did not arise from the September 12, 2013 tentative decision, which was vacated, any objection by Accountants concerning the court’s request for a proposed statement of decision from the Board will not be considered here. The tentative decision was superseded, the court’s request for a proposed statement of decision was of no consequence, and Accountants were not

prejudiced thereby. (See *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1215 [petitioner “must show a prejudicial abuse of discretion to prevail”].)

Second, Accountants did not challenge below the court’s request on April 25, 2014, after close of evidence and argument, that each party submit proposed statements of decision presenting their respective positions. Had Accountants alerted the trial court of their current position that a request for proposed statements of decision from both parties at that juncture was improper, the court would have had the opportunity to hear argument from both parties and, if necessary, modify or vacate its request. (See *Keener, supra*, 46 Cal.4th at p. 264 [forfeiture rule intended to encourage party to assert errors at trial, so that trial court can avoid or correct them].) Accountants’ claim of error is therefore forfeited. (*In re Marriage of Arceneaux, supra*, 51 Cal.3d at pp. 1133-1134; *Doers, supra*, 23 Cal.3d at pp. 184-185, fn. 1.)

Third, even were we to consider Accountants’ contention, the court did not improperly delegate its duties by requesting that both parties submit proposed statements of decision on April 25, 2014, after close of evidence and final argument. We observe initially that Accountants cite no apposite authority in support of their claim of error. This failure to include citation of authority in support of their legal position “amounts to an abandonment of the issue.” (*People ex rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284.)³⁹ The contention in any event has no merit.

³⁹ Accountants cite *Black, supra*, 135 Cal.App.2d 904, and *Val Strough Chevrolet Co. v. Bright* (1969) 269 Cal.App.2d 855 (*Val Strough*) in the section of their opening brief in which this argument is made. As discussed (see fn.37, *ante*), *Black* has no application since it involved a trial court applying the substantial evidence standard of review. In any event, it did not involve a claim that the trial court erred by delegating its duties to one party. In *Val Strough*, the trial court, in exercising its independent judgment, made findings contrary to those of the agency, and the appellate court upheld

continued

Under Code of Civil Procedure section 632, a court is obligated after a trial, upon a timely request by a party, to provide a statement of decision “explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial.”⁴⁰ (See also Cal. Rules of Court, rule 3.1590.) “A hearing on a petition for writ of administrative mandamus is a trial of a question of fact for purposes of Code of Civil Procedure section 632,” requiring a statement of decision upon a party’s timely request. (*Giuffre v. Sparks* (1999) 76 Cal.App.4th 1322, 1326, fn. 3.)

As explained by one court: “The statement of decision provides the trial court’s reasoning on disputed issues and is our touchstone to determine whether or not the trial court’s decision is supported by the facts and the law.” (*Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 718.) “One purpose of the statement of decision is to allow the trial court to reconsider and modify its tentative decision, and to make whatever findings are necessary to support its intended judgment.” (Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2018) ¶ 16.94, p. 16-21.) The court in its statement of decision need not address all legal and factual issues that the parties have

the superior court, concluding that its findings were supported by substantial evidence. (*Val Strough, supra*, at pp. 861-863.) Val Strough did not concern an issue of the trial court’s having allegedly delegated its authority to a party to make findings, the contention made by Accountants here.

⁴⁰ “In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision. After a party has requested the statement, any party may make proposals as to the content of the statement of decision. [¶] The statement of decision shall be in writing, unless the parties appearing at trial agree otherwise; however, when the trial is concluded within one calendar day or in less than 8 hours over more than one day, the statement of decision may be made orally on the record in the presence of the parties.” (Code Civ. Proc., § 632.)

raised; rather, it must “ ‘state only ultimate rather than evidentiary facts because findings of ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them. [Citation.]’ [Citations.] In other words, a trial court rendering a statement of decision is required only to set out ultimate findings rather than evidentiary ones.” (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125.)

Here, the trial court, in advance of issuing a new tentative decision (after vacating its prior tentative decision of September 12, 2013), requested that *both parties* submit proposed statements of decision reflecting their respective positions in the case. The court was free to adopt or reject, in whole or in part, either party’s proposed statement of decision. There is no basis for concluding from the fact that the court requested these submissions that it thereby abdicated its obligations to decide the case. And, as noted, Accountants have cited no law to support their argument. Further, we acknowledge that the trial court’s procedural approach here of requesting proposed statements of decision from both parties *prior to* its issuance of a tentative decision differed from the more typical approach in which a court, after announcing its tentative decision, requests that the prevailing party prepare a proposed statement of decision. (See Cal. Rules of Court, rule 3.1590(c)(3).) But the trial court’s procedure here was not legally impermissible, and it may be viewed as a request that the parties—regardless of the assignment of the name of the submissions—present post-trial briefs providing road maps of their respective positions and how they believed the case should be decided by the court.

The trial court did not commit error in requesting that the parties, after close of evidence and conclusion of argument on April 25, 2014, submit proposed statements of decision presenting their respective positions in the case.⁴¹

⁴¹ Accountants present a final argument that the trial court was required to remand the case to the Board for further proceedings because “there [were] insufficient findings
continued

III. DISPOSITION

The judgment entered on October 17, 2014, denying the petition for writ of mandate, is affirmed. Upon finality of this decision, the writ of supersedeas staying the Board's revocation decision is dissolved.

to support a fair review.” Since we have concluded, *ante*, that the ALJ's Decision appropriately included findings that permitted judicial review in accordance with *Topanga, supra*, 11 Cal.3d 506, we reject this argument.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.

Ramanan v. California Board of Accountancy Department of Consumer Affairs
H041566